

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1718.

456

FRANCIS T. STONE, APPELLANT,

vs.

J. W. FOWLKES.

FILED AUGUST 14, 1906.

No. 1719.

J. W. FOWLKES, APPELLANT,

vs.

FRANCIS T. STONE.

FILED AUGUST 22, 1906.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1719.

J. W. FOWLKES, APPELLANT,

vs.

FRANCIS T. STONE.

No. 1718.

FRANCIS T. STONE, APPELLANT,

vs.

J. W. FOWLKES.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 1718.

FRANCIS T. STONE, Appellant,

vs.

J. W. FOWLKES.

and

No. 1719.

J. W. FOWLKES, Appellant,

vs.

FRANCIS T. STONE.

a Supreme Court of the District of Columbia.

No. 23921. In Equity.

J. W. FOWLKES, Complainant,

vs.

FRANCIS T. STONE and ROBERT N. HARPER, Defendants.

UNITED STATES OF AMERICA, *District of Columbia*, ss :

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill.*

Filed April 27, 1903.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Equity. 23921, Doc. 53.

J. W. FOWLKES, Complainant,

vs.

FRANCIS T. STONE, ROBERT N. HARPER, Defendants.

Your complainant shows as follows :

(1.) That he is a citizen of the United States and at the present

time a resident of said District, and brings this suit as equitable co-tenant of the land and premises hereinafter mentioned.

That the defendants are also citizens of the United States and residents of said District and are sued in their own right in the capacities in which they are respectively mentioned or referred to in this bill of complaint.

(2.) Your complainant further shows that heretofore, to wit, on or before the 16th day of August, A. D. 1900, the defendant, Francis T. Stone, and complainant agreed together for the purchase of the tract of land in Prince George's County, Maryland, to be employed chiefly for the purpose of a poultry farm, of which your complainant should have charge; that said agreement was afterwards

2 carried into execution, your complainant contributing toward the purchase price of said land the sum of two hundred and twenty-five dollars (\$225.00) by two checks, one of \$200.00, dated May 28th, 1900, and the other for \$25.00, dated June 4th, 1900, and both checks drawn payable to the order of said defendant Stone, which checks were endorsed by said defendant Stone, and the money received therefor used by him in payment for said land. The cash payment for said land was one hundred and ninety dollars (\$190.00), the balance of the purchase money being represented by three notes each for the sum of eighty-two dollars and fifty cents (\$82.50), and aggregating two hundred and forty-seven dollars and fifty cents (\$247.50) and making the total price for said land the sum of four hundred and thirty-seven dollars and fifty cents (\$437.50), toward which your complainant contributed \$225.00 as aforesaid; that is to say, thirty-five dollars more than the cash payment required. Two of the notes for deferred payments have since been paid; that is to say, one hundred and sixty-five dollars (\$165.00). Your complainant has been informed by the defendant Stone that in consequence of the failure by vendor to perform a condition required by the deed, the last of the notes for deferred payments is no longer an obligation of the vendees. If this be the correct view, then the total purchase money of the land would be three hundred and fifty-five (\$355.00), to which should be added nine dollars (\$9.00) for cost of surveying, recording deeds and revenue stamps, making a total of three hundred and sixty-nine dollars (\$369.00), of which your complainant would have con-

3 tributed the two hundred and twenty-five dollars (\$225.00) aforesaid and the defendant Stone one hundred and thirty-nine dollars (\$139.00). If, however, the remaining note is properly payable by the vendees, and is paid at maturity by the defendant Stone (as is agreed to be done by said defendant, if the same be a subsisting obligation) then the whole purchase money will be that stipulated in the deed, viz, \$437.50 plus the nine dollars (\$9) for cost of surveying, recording and revenue stamps as aforesaid, that is to say \$446.50, of which your complainant will have paid \$225.00, as aforesaid, and the defendant Stone \$221.50, and the proportions of interest in said realty held by complainant and said defendant will be in the former case as 225 to 139, and in the latter as 225 : 221.50. Your complainant further states that the title to said

realty was placed in the name of said Stone only by the deed of conveyance, but the equity of the ownership is as herein stated, and your complainant as part purchaser of said land, entered upon said land, and occupied the same for the purposes contemplated by the purchase thereof, and continued as such occupant until his health gave way and it was necessary for him to go to a hospital for treatment. Your complainant prays leave to file hereafter a duly certified copy of said deed to be marked Exhibit A, and to be taken as part hereof.

(3.) Your complainant further shows that there have been expended since the purchase of said realty various sums for the improvement thereof, and your complainant has received from the

defendant Stone what purports to be an itemized list of all
4 the sums expended by said defendant upon or in connection with the premises in question including various sums ad-

vanced to your complainant to cover hospital expenses incurred at the time of the above referred to sickness of complainant. Although not agreeing with the mode of application of these payments, sought to be made by said defendant, your complainant admits that all such expenses in connection with said premises to the extent that they exceed the proportion properly chargeable to said defendant's interest therein constitute a debt properly payable by your complainant out of his proportion of the proceeds of any sale of the premises aforesaid. Your complainant files herewith a copy of said itemized list marked Exhibit B and prayed to be taken as part hereof.

On the other hand, complainant has spent in procuring, providing, and clearing the place for use \$104.00. Your complainant is advised and insists and so charges, that the expenses upon the place should be in the proportion of the interest acquired by each in the original purchase of the realty; that if the original interest acquired in the realty was as 225 : 139, then the expenses should be borne by the complainant and the said defendant in the same ratio; and if as matter of fact, the expenses upon said property defrayed by said defendant Stone were in excess of the ratio established by his proportion of the purchase of the land, then to the extent of such excess a debt is created in favor of defendant against complainant, so that in the event of the sale of said realty, after the division of the pro-

ceeds of sale in the proportion above indicated between com-
5 plainant and said defendant, the debt so due said defendant

for the excess of his due proportion of expenditures should be paid him out of complainant's portion of the proceeds; and the same is correspondingly true in case the ratio established by the relative proportions of purchase is that of 225 to 221.50; that is to say if the total expenses were six hundred and sixty dollars and eighty-one cents (\$660.81), then after first dividing the proceeds of sale, the part payable by complainant should be to that of said defendant as 225 to 139 in the former case or as 225 to 221.50 in the latter.

(4.) Your complainant further shows that while with his consent the title to said realty was placed in the name of said defendant Stone exclusively, yet that said Stone has in repeated writings

signed by said defendant acknowledged the interest of your complainant in said realty, and on different occasions in contemplation of the possible sale thereof, (which afterwards fell through), has expressed his willingness to receive as his share of the price to be paid therefor, the cash invested by said Stone in said five acres with 6 per cent. interest thereon, your complainant to have the balance. These particular agreements related to the sales then contemplated, and not to others. Your complainant is advised and insists, and so charges, that the sale of equity as already stated would apply to any sale of said property, in the absence of express agreement between the parties, modifying the rule aforesaid. Your complainant files herewith a copy of one such paper, marked exhibit C, and prayed to be taken as part hereof.

6 (5.) Your complainant further shows that he is informed and believes, and so charges, that there is at this time an agreement for the sale of said realty by the defendant Stone to the defendant Harper; that by said agreement the defendant Harper is to take said land at a valuation of fifteen hundred dollars, in part payment of the drugs, chemicals and fixtures of the store No. 609 Pennsylvania Avenue, N. W., that said agreement has not yet been consummated by transfer, and that your complainant prior to any consummation of said agreement, both personally and by counsel, informed the said defendant Harper of complainant's interest in said land, and rightful claim in consequence to his due proportion of the price therefor and the same is well known to said defendant Harper.

(6.) Your complainant further shows, that the defendant has stated both to complainant and to complainant's counsel that complainant did contribute the sum of two hundred and twenty-five dollars to the purchase of the land aforesaid, and expressed a willingness to give full credit therefor in the settlement of accounts between them, but has not agreed to complainant's conclusions therefrom, nor to any terms which complainant is willing to accept.

In consideration of the premises and inasmuch as complainant has no adequate remedy at law and can only obtain adequate relief in this Honorable Court where such matters are peculiarly cognizable and relievable, and to the end that said defendants, each and both may, if they can, show why complainant should not have the relief hereby prayed, and may upon their several and respective knowledge and remembrance, answer the exigency of this

7 bill, and full, true, direct and perfect answer make to all and singular the matters aforesaid as fully and particularly as if the same were here repeated and said defendants and each of them were directly and specially interrogated as to the same, and that the said defendants, may upon their corporal oaths, and according to the best and utmost of their knowledge and remembrance, full, true, direct, and perfect answers make to the several interrogatories hereinafter numbered, and set forth, as by the note hereinafter written, that is to say :

Interrogatories Addressed to Defendant Stone.

(1.) Did the complainant and yourself join in the purchase of five acres of land in Prince George's County, Maryland, called by you Springwood?

(2.) Did the complainant contribute to the purchase of said five acres of land by two checks aggregating \$225.00 dated May 28th, 1900, and June 4th, 1900, respectively, made payable to your order, and by you endorsed, and the proceeds placed to your credit for the purpose of being used by you in part payment for said land, and did you so use the same?

(3.) Did the complainant shortly after the execution and recordation of the deed for said land, enter upon and take possession of the premises as part owner thereof, and did he have the exclusive direction and management of what was done thereupon?

(4.) Was the first payment of one hundred and ninety dollars made out of the two hundred and twenty-five dollars advanced by the complainant for this purpose?

For what expenses upon the property were applied the various sums enumerated in Exhibit B, under the caption "Cash"? And other sums under the caption "Check"?

(5.) Have you entered into an agreement with the defendant Harper for the sale to him of the said five acres of land at a valuation of fifteen hundred dollars, and has the said defendant Harper agreed to become a purchaser of said land at this valuation?

Interrogatories Addressed to the Defendant Harper.

(1.) Have you entered into an agreement with the defendant Stone for the purchase of the five acres of land, referred to in this bill, for the sum of fifteen hundred dollars to be paid by you therefor?

(2.) Is the completion of said agreement simply awaiting the determination of the respective interests of the complainant and the defendant Stone in the land aforesaid?

(3.) Were you informed by the complainant that he had an interest therein, and were you apprised of the same fact by the defendant Stone?

Your Complainant prays as follows:

1st. That the parties named as defendants to this bill may be made defendants to the same.

9 2d. That the right and interest of the complainant in the real estate in the bill mentioned, and the extent thereof, and the proper limitation of the right and interest of the defendant Stone may be defined and adjudicated by this Honorable Court, and that the proportion of purchase money justly due the complainant on any sale which may be made, or has been made, or is now agreed to be made of the said realty be decreed to belong to

complainant, and to be payable and paid to complainant by said Stone, if said Stone shall receive or has received the full price thereof.

3rd. That the complainant may have such orders and all such references to Examiners, or references to the Auditor, or statements of accounts as the nature of the case may require or the Court may deem proper; and that the defendants be restrained from completing this sale, & the defendant Stone be restrained from completing any sale of said premises without accounting to complainant.

4th. That the complainant may have all such other and further relief in the premises as the nature of the case may require, or to which complainant is entitled.

To which end the complainant prays for process against the defendants, requiring them to answer under oath the exigency of this bill.

The defendants to this bill are Francis T. Stone and Robert N. Harper.

J. W. FOWLKES.

LEIGH ROBINSON,
Solicitor for Complainant.

10 I do solemnly swear that I have heard read the bill by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

J. W. FOWLKES.

Subscribed and sworn to before me Ap'l 27, 1903.

JOHN R. YOUNG, *Cl'k*, &c.,
By R. J. MEIGS, JR., *Ass't Cl'k*.

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EXHIBIT B.

Filed April 27, 1903.

1900.			
May 28.	To cash		\$5 00
June 3.	"		1 00
June 6.	"		5 00
June 6.	"		10
June 18.	"		1 50
June 20.	"		20
June 21.	"		5 00
July 2.	"		1 00
July 9.	Check for furniture.....		19 95
July 10.	To cash		1 00
July 18.	"		1 00
July 24.	"		1 00
Aug. 1.	"		1 00
Aug. 9.	"		45
Aug. 14.	Butter		15

FRANCIS T. STONE VS. J. W. FOWLKES.

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Aug. 20.	To cash	1 00
Aug. 25.	Food	60
Aug. 25.	To cash	05
Aug. 28.	To cash	1 00
Sept. 6.	"	75
Sept. 11.	"	10 00
Oct. 4.	"	10 00
Oct. 19.	"	10 00

\$76 75

Nov. 6.	"	10 00
Nov. 20.	To check	25 00
Dec. 20.	To cash	2 00
Dec. 31.	"	2 00

1901.

Jan. 10.	"	50
Jan. 17.	"	2 00
Jan. 19.	"	50
Jan. 29.	"	1 00
Feb. 6.	"	1 00
Feb. 11.	"	1 00
Feb. 17.	"	2 00

\$123 75

Feb. 22.	Entered at Providence Hospital paid one week in advance	7 00
M'ch 7.	Paid for medical attention in hospital.....	5 50
M'ch 8.	To cash	5 00
M'ch 13.	To check	10 00
Apr. 24.	To cash	1 00

\$152.25

12

\$152 25

Apr. 26.	To cash	2 15
Apr. 30.	"	5 00
May 1.	"	25
May 2.	Express on watch	25
May 2.	To cash	5 00

See A \$164 90

A.

First payment on land	\$190 00
Building house.....	\$240 00
Porch	5 00
Painting house.....	16 00
Building two new houses	30 00
	<hr/> 291 00

Paid to J. F. Fowlkes.....	164 90
“ for surveying.....	5 00
“ recording deeds and revenue stamps*.....	4 00
“ First note *	87 45
	<hr/>
	\$742 35
Less received from J. W. F.....	225 00
	<hr/>
	\$517 35

13

Answer of Defendant Stone.

Filed July 6, 1903.

In the Supreme Court of the District of Columbia.

Equity. No. 23921, Docket No. 53.

J. W. FOWLKES, Complainant,

vs.

FRANCIS T. STONE ET AL., Defendants.

This respondent, Francis T. Stone, without waiving any of his rights, but on the contrary now and at all times expressly saving and reserving to himself all manner of benefit or advantage of objection, exception, demurrer or otherwise, that may, can be had or taken to the many errors, mistakes, irregularities or imperfections in said Bill of Complaint contained, and hereby expressly claiming or asking all manner of benefit and advantage to which he is or may be entitled as fully as if he had separately and specifically objected, excepted and demurred to the said Bill of Complaint, and on account of each, all and every ground for so doing, for answer to the said Bill of Complaint, or to so much thereof as he is advised is necessary, material or proper for him to make answer to, answering says:

1. He admits that the complainant is a citizen of the United States and at the present time a resident of the District of Columbia, but denies that he is an equitable co-tenant of the land and premises mentioned in said Bill of Complaint.

14 2. He admits as true the allegations contained in the second paragraph of said Bill, but denies that complainant is equitable co-tenant as alleged.

2. Answering the next paragraph of said Bill of Complaint, also numbered 2, this respondent admits that on the 16th day of August, 1900, he and complainant agreed to enter into a partnership business for the purpose of raising poultry, and this respondent purchased a tract of land in Prince George's County, Maryland, with his own money, and took title to the same from one Laura E. Magruder, which property is described in Exhibit "A" filed with complainant's Bill.

This respondent admits that said complainant paid to him \$225.00,

agreeing to pay \$175.00 more or \$400.00 in all, to be held by him as a part of the share that complainant was to contribute towards equipping and stocking said property purchased by this respondent for the purpose of pursuing the poultry business.

He further admits that the cash payment on said land was \$190.00, and that the balance of \$247.50 was represented by three notes of \$82.50 each made by this respondent, aggregating in all \$437.50, but denies that any part of the money contributed towards the venture by complainant was used in paying for the land in question.

This respondent admits that complainant went into possession of the property, not as co-tenant of the real estate, but as a partner in the poultry business with the distinct understanding that the profits growing out of said business should be divided equally between them, each to bear a corresponding part of the losses, complainant representing at the same time that he had no desire to make money, but wished to establish himself in the poultry business which was a total failure from start to finish.

He admits that a small part of the \$225.00 was used in equipping the property for complainant to prosecute the said business. The complainant has withdrawn, however, from this respondent of the \$225.00 left in his hands \$164.90 leaving a balance of \$60.10 which has been spent in the partnership business and is not in any manner chargeable against said land. At the time of the purchase of said land this respondent had \$600.00 of his own money in bank and used a part of said money to make the cash payment on the purchase of said land.

This respondent denies that complainant has spent \$104.00 in procuring, providing and clearing the property in question and also denies any authority on the part of said complainant to put in a charge for examination of title as no abstract was ever furnished, and besides he is not a lawyer. Moreover, this respondent never agreed to compensate complainant for services in looking up a suitable place for the business and calls for strict proof of said expenditure. This respondent insists that whatever services were rendered by complainant in procuring, providing and clearing said property was done under a contract with this respondent as a consideration to induce this respondent to make a venture in this business with complainant which, as stated above, has been a decided failure.

He further denies that the charges have any bearing whatever on the real estate and should be charged to the profits and losses of the partnership business.

This respondent admits that he had a prospect of selling said property and not until then did complainant claim any interest in the land, and it was during these negotiations, which fell through, that complainant came to his place of business and subjected him to untold annoyance and inconvenience and that this respondent informed him, the complainant, that if he, the complainant, would reimburse him, this respondent, for the amount of money which this respondent had invested in this land and protect him on the notes which he had given for the balance of the purchase money with six

per cent. interest this respondent would be willing to convey the land to complainant, or his nominee, but denies that he ever gave complainant any writing to the effect that he had an interest in the property. He also denies any failure on the part of vendor to perform any condition required by the vendee whereby this respondent would be released of his obligation on the notes for the balance of the purchase money.

3. In answer to the third paragraph of said Bill of Complaint he admits that he gave complainant a statement showing the total amount of money which had been spent in the purchase of the land which also embraced the amount spent in the partnership business in equipping the property for the prosecution of the said business, when informed by complainant of a possible purchaser. He
17 denies most emphatically that complainant spent \$104.00 in procuring and clearing the place for use, but answering further says that a part of the wood land was cleared under the direction of this respondent by one John Gregory; the wood cut therefrom, sold and the money paid to this respondent without any protest from the complainant. He denies any interest complainant may claim in said real estate, but admits that complainant contributed \$225.00 to inaugurate the poultry business of which amount \$164.90 has been withdrawn by complainant leaving a balance of \$60.10 which together with other money belonging to this respondent has been spent in equipping the property for the poultry business.

4. In answer to paragraph four of said Bill of Complaint, this respondent admits that the title to said land was taken in his name and the cash payment of the purchase price was paid out of this respondent's funds, but denies that he has ever given any writing by which this respondent admitted any interest of complainant in said property. Further answering, this respondent says that complainant came to him and told him that he had a purchaser for the place and wanted to know what he, complainant, would get out of it, and this respondent admits that he gave him a writing in these words: "All I ask and want is the cash I have invested in the five acres called Springwood with interest at six per-cent. and also to be released from the two outstanding notes. Just hand me back this and take the place. Forty days is agreed upon as the time in which
to sell the place. If not sold in forty days this is void." He
18 admits giving complainant a writing showing a statement of the money spent for the purchase of the land and the money spent in the partnership business, but denies any interest of complainant in the said real estate.

5. Answering paragraph five of said Bill of Complaint, this respondent admits that there were negotiations between this respondent and the defendant Robert N. Harper for the exchange of the property described in deed filed with complainant's Bill for an interest in the drug business as set forth in paragraph five of said Bill of Complaint which have been declared off as a result of this suit as set forth in the answer of defendant Harper filed in these proceedings.

6. In answer to paragraph six of said Bill of Complaint, this re-

spondent admits that he informed complainant and complainant's counsel that complainant had deposited with him \$225.00 to inaugurate the poultry business and has agreed to, as set forth in a previous paragraph, sell the land and his interest in the poultry business to complainant, but denies any interest of complainant as co-tenant in said land.

Answers to Interrogatories Addressed to Respondent.

Answering interrogatory No. 1 respondent says no.

Answering interrogatory No. 2 this respondent admits that complainant gave him two checks dated May 28th and June 4th, 1900, respectively, amounting to \$225.00, but denies that any of this money was used in the purchase of said land, and claims that complainant has withdrawn \$164.90 and that the balance of
19 \$60.10 was expended by this respondent in equipping the property for the poultry business.

Answering interrogatory No. 3 this respondent admits that complainant did go into possession of the property after the execution and recordation of the deed, not as joint owner of the land, but as a partner in the poultry business. This respondent says all work done on the property was given out by contract by this respondent except the clearing of about one acre of underbrush which was done under the supervision of complainant.

Answering interrogatory No. 4 this respondent says that the cash payment of \$190.00 on the land in question was not paid out of the \$225.00 deposited with him by complainant for the inauguration of the poultry business, but insists that the cash payment was made with his own money. What complainant did with the various sums paid him as shown in Exhibit "B" this respondent cannot tell; a very small part of it was spent on the property. All of the poultry which was purchased to stock the business was appropriated, as well as the increase and profits, if any, by complainant to his own use.

Answering interrogatory No. 5 this respondent admits that there was an agreement existing between himself and defendant Harper for an exchange of this property for an interest in the drug business which has been declared off as a result of this suit.

And now having fully answered, this defendant prays to be hence dismissed with his reasonable cost.

F. T. STONE.

PHIL W. CHEW,
R. B. B. CHEW, JR.,
Sol's for Def't Stone.

20 DISTRICT OF COLUMBIA, *To wit:*

Francis T. Stone being first duly sworn according to law deposes and upon oath says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated upon his personal knowledge are true and those stated upon information and belief he believes to be true.

F. T. STONE.

Subscribed and sworn to before me this sixth day of July, nineteen hundred and three.

[NOTARIAL SEAL.]

ARTHUR G. COLE,
Notary Public, D. C.

Separate Answer of Robert N. Harper.

Filed May 26, 1903.

In the Supreme Court of the District of Columbia.

Equity. No. 23921, Docket No. 53.

J. W. FOWLKES

vs.

FRANCIS T. STONE ET AL.

21 This defendant, Robert N. Harper, without waiving any of his rights, but on the contrary now and at all times expressly saving and reserving to himself all manner of benefit or advantage of objection, exception, demurrer or otherwise, that may, can be had or taken to the many errors, mistakes, irregularities or imperfections in said Bill of Complaint contained, and hereby expressly claiming or asking all manner of benefit and advantage to which he is or may be entitled as fully as if he had separately and specifically objected, excepted and demurred to the said Bill of Complaint, and on account of each, all and every ground for so doing, for answer to the said Bill of Complaint, or to so much thereof as he is advised it is necessary, material or proper for him to make answer to, answering says:

1. That he admits that the complainant is a citizen of the United States and at the present time a resident of the District of Columbia, but is not informed as to whether or not the complainant is an equitable cotenant of the land and premises mentioned in said bill of complaint.

2. This respondent admits as true the allegations contained in the second paragraph of said Bill.

2. In answer to the next paragraph of said Bill of Complaint also No. "2," this respondent says that he is not informed as to the matters and things therein contained and can neither admit nor deny the same, but will require strict proof of the allegations contained in said paragraph if the same are deemed material by the Court.

22 3. This respondent is not informed as to the matters and things contained in the third paragraph of said Bill and can neither admit nor deny the same, but will require strict proof if the same are deemed material by the Court.

4. This respondent is not informed as to the matters and things contained in the fourth paragraph of said Bill, and can neither admit nor deny the same, but will require strict proof if the same are deemed material by the Court.

5. In answer to the 5th paragraph of said Bill of Complaint this respondent admits that on the 7th day of February, 1903, he entered into a contract of sale with the other respondent hereto, Frank T. Stone, and one S. Stuart Poole, whereby this respondent agreed to sell all his right, title and interest in the drug store No. 609 Pennsylvania Avenue, N. W., in the City of Washington, D. C. including good will and certain private formulas, and agreed to take in part payment thereof a deed from said Frank T. Stone, for his property in Prince George's County, Maryland, located near Bennings, at a valuation of Fifteen hundred dollars; the same to be free and clear of all incumbrances; that said agreement so far as the same relates to the land described in said Bill of Complaint has not been consummated; and respondent further admits that he was informed by both the complainant herein and his attorney that the complainant claimed an interest in said property.

23 That since the filing of said Bill of Complaint against the respondent Stone, and this respondent, this respondent has cancelled said agreement so far as the same relates to the taking in part payment of the land and premises described in said Bill of Complaint, and notified the respondent Stone that he declined to accept said real estate in part payment of said drug business in its present condition. That said respondent Stone has made other arrangements satisfactory to this respondent for his failure to convey in fee simple, to this respondent, the land and premises described in said paragraph of said Bill of Complaint, free and clear of all encumbrances; and the contract of purchase and sale for this respondent's drug store has been consummated.

6. In answer to the first part of the sixth paragraph of said Bill, this respondent is not informed as to the matters and things therein contained, and can neither admit nor deny the same.

In response to the interrogatories in said sixth paragraph contained, addressed to this respondent, this respondent in answer thereto, answering says:

1. In answer to the first interrogatory addressed to this respondent, this respondent says that on the 7th day of February, 1903, he entered into an agreement with the defendant Stone to take in part payment certain real estate in Prince George's County, Maryland, near Bennings (title to which is in the said defendant Stone) at the valuation of Fifteen hundred dollars.

24 2. In answer to the second interrogatory addressed to this respondent, this respondent says that the agreement between this respondent and the respondent Stone, and one S. Stuart Poole, has been consummated, and is not awaiting the determination of the respective interests of the complainant and the defendant Stone in the land described in said Bill of Complaint.

3. In answer to the third interrogatory addressed to this respondent, this respondent says that he was informed by the complainant that he had an interest in said land; but that the said respondent Stone denied that the complainant had any interest therein whatsoever.

And now having fully answered, this respondent prays to be hence dismissed with his reasonable costs.

ROB'T N. HARPER.

BERY & MINOR,
Sol'rs for Def't Harper.

DISTRICT OF COLUMBIA, *To wit:*

Robert N. Harper, being first duly sworn according to law deposes and upon oath says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated by him upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

ROB'T N. HARPER.

Subscribed and sworn to before me this 25th day of May, A. D. 1903.

[NOTARIAL SEAL.] WILLIAM SELBY,
Notary Public.

25 *Replication to Answer of Defendant R. N. Harper.*

Filed June 12, 1903.

In the Supreme Court of the District of Columbia, Sitting in Equity.
Equity.

J. W. FOWLKES, Complainant,
vs.
FRANCIS T. STONE & ROBERT N. HARPER, Defendants.

The complainant hereby joins issue with the defendant Harper.
LEIGH ROBINSON,
Solicitor for Complainant.

Replication to Answer of Defendant F. T. Stone.

Filed July 15, 1903.

In the Supreme Court of the District of Columbia, Sitting in Equity.
Equity. No. 23921.

" J. W. FOWLKES, Complainant,
vs.
FRANCIS T. STONE, ROBERT N. HARPER, Defendants.

26 The complainant hereby joins issue with the defendant Francis T. Stone.

LEIGH ROBINSON,
Solicitor for Complainant.

Amendments to Bill of Complaint.

Filed June 15, 1905.

In the Supreme Court of the District of Columbia, Sitting as a
Court of Equity.

Equity. No. 23921.

J. W. FOWLKES, Complainant,
vs.
F. T. STONE ET AL., Defendants.

The complainant, leave of Court, being first asked and received, amends his bill of complaint, in the second paragraph and on the 3d page thereof, beginning on the 5th line thereof so as to make said paragraph read from that point to the end as follows: The proportions of interest in said realty held by complainant and said defendant will be in the former case as 225 to 139 and in the latter as 225:221 50: that is to say, in the case last mentioned, the proportion of each was in effect, one moiety of the price of the land purchased and complainant claims that thereby he became entitled to a one half interest therein; and there was created a trust to him therefor; that the expenditure upon the place, *i. e.* upon said
27 realty, whether of money, labor, or care, should fall in equal proportions upon each, that is each should bear one half thereof.

And by further leave of Court, amends the third paragraph on page 4, eight lines from the top, by striking out the words or figures "\$104," and inserting in place thereof, the words, "services of the value of three hundred and fifty dollars," so as to make the allegations of the bill conform to the proof.

And by further leave of Court complainant amends the prayers of the bill, by inserting after 2d prayer, prayer No. 2 $\frac{1}{2}$ as follows:

Prayer 2 $\frac{1}{2}$. "That upon the determination by the Court of the interest of complainant in said realty, and in default of the sale agreed upon as stated in the bill, that the defendant Stone be decreed to convey to complainant the interest therein to complainant rightfully belonging."

THE COMPLAINANT,
By LEIGE ROBINSON, *Solicitor*.

Filed June 30, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 23921, Doc. 53.

JUNIUS W. FOWLKES

vs.

FRANCIS T. STONE ET AL.

Upon motion of the defendant the decree heretofore entered in this cause under date of June 17th, 1905, is hereby vacated, and the following decree is substituted therefor.

This cause having been heard upon the pleadings and testimony and the arguments of counsel, and duly considered, it is adjudged that the real estate in question was, and is, a partnership asset, and that the title thereto is held by the defendant as trustee for the complainant and defendant in proportion to their respective interests in the partnership as may appear upon an accounting; and to the end that such interests may be accurately determined, the cause is referred to the Auditor of the Court to take and state an account upon testimony already in and such other testimony as may be offered, and to report the same with his findings. Upon the coming in of such report a final decree shall be entered.

Said real estate is described as follows:

29 "Situating in the County of Prince George, State of Maryland, to wit: Five (5) acres of land lying along the Wright and Magruder boundary line, being the Western boundary line of the Laura E. Magruder tract. Beginning at a point marked by a stob and stone about twenty (20) feet east of the center of the Wright or Spa Spring on the Wright-Magruder line, then two hundred (200) feet north to a point. Beginning at the same stob and stone about twenty (20) feet east of said spring, then three hundred and eighty (380) feet south to a stob. This western boundary line of the aforesaid five (5) acres is five hundred and eighty (580) feet long. Beginning at a point two hundred feet (200) north of the stob or stone (about twenty (20) feet east of the said spring), then three hundred and seventy-five (375) feet east to a point, then from this last named northeastern point five hundred and eighty (580) feet south to a point, then from this last named southeastern point three hundred and seventy-five (375) feet west to the point or stob at the southern end or corner of the five hundred and eighty (580) — long western boundary line of the five (5) acres."

Done in court this thirtieth day of June, 1905.

WENDELL P. STAFFORD, *Justice.*

Auditor's Report.

Filed October 13, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 23921.

JULIUS W. FOWLKES

vs.

FRANCIS T. STONE ET AL.

This cause is referred to me to state an account between the parties to show their respective interest in the partnership. After due notice I proceeded with the reference.

The decree finds that the title to the real estate in question is held by the defendant as trustee for himself and the complainant in proportion to their respective interests in the partnership.

The real estate in question was purchased for the sum of \$427.50 of which sum the defendant Stone paid in cash the sum of \$180.00 giving his three promissory notes each for the sum of \$82.50 payable in one, two and three years with interest. Stone also paid the cost of a survey and of the deeds.

The defendant proceeded to construct certain buildings on the land costing the sum of \$291.00 which he paid.

The expenditures represent the total cost of the property. Of this sum the complainant furnished \$225.00, the defendant Stone furnishing the remainder from his own funds. The annexed schedule contains an account of the costs of the land and buildings and the contribution thereto of each of the said parties which
31 represents their respective interests in the property.

Apart from this question there is a controversy between the parties respecting what they term a partnership business. It appears that this real estate was purchased partly to provide a home for the complainant and as a place for conducting the sale of poultry and other similar business.

The defendant Stone furnished to Fowlkes or expended on account of the business sums of money aggregating according to his testimony \$164.90 of which the complainant admits the sum of \$129.99. Of this the latter expended about \$32.50 for purchase of chickens and sundry incidentals and about \$20.00 for the purchase of furniture. A portion of the money furnished by the defendant was for personal expenses of the complainant and could not be termed or considered as on account of the business but rather as a loan.

The complainant claims to have rendered services and labor to the amount of \$350.00 and that this should be treated as a contribution to the capital including the purchase of the real estate.

While the precise terms of this partnership or joint venture are not clearly defined the understanding of the parties may be gathered from what they did respectively. Stone furnished the necessary funds for the purchase of the stock, furniture for the house and incidental expenses while Fowlkes rendered service in purchasing

the stock, providing for its safe keeping and supervising the details
of the joint business. We may safely presume that the
32 profits and the losses of the business were to be equally
shared.

The venture was a failure.

Such a case is not an exception to the general rule that one partner cannot charge his copartner for services rendered in conducting the partnership business even though he be what is termed a managing partner.

A leading case on this point is *Denver vs. Roane* 99 U. S. 355.

Much less can these services be treated as a contribution to the purchase of the real estate.

The evidence shows that about 28 cords of wood were cut on the land of which 22 cords were cut by one Gregory who paid the defendant Stone for the same at the rate of fifty cents a cord, the other six cord- are not accounted for.

In Schedule B I have stated an account between the parties with relation to the business crediting the defendant with the money admittedly furnished and expended for the business less the sum received by him for the wood. The balance represents a loss to be shared by the parties in equal proportions.

The complainant claims damages against the defendant Stone for the failure of a sale of the real estate to the defendant Harper. The pending transaction appears to have been more of a barter than a sale, and of rather uncertain advantage to the owners of the realty. However that may be I find no ground for holding Stone answerable for Harper's refusal to take the property in view of this litigation.

33 Nor do I find the defendant Stone accountable for rent or use of the property. The proof does not show the receipt by him of any rent or profit excepting that realized from the sale of wood as herein specified. JAS. G. PAYNE, Auditor.

34 *Account of Moneys Paid by Francis T. Stone and Julius W. Fowlkes Respectively for the Purchase of the Land and the Construction of the Buildings Thereon.*

By Francis T. Stone :

" Cash payment on purchase of land	180.00
" Paid first deferred payment with interest.....	87.45
" Paid second deferred payment with interest.....	92.40
" Paid third deferred payment with interest.....	97.35
" Cost of conveyancing.....	4.00
" Cost of survey.....	5.00
" Paid for construction of buildings including the painting.....	291.00
	<hr/>
	757.20
Less advanced by Julius W. Fowlkes	225.00
	<hr/>
	532.20

JAS. G. PAYNE, Auditor.

35 By Julius W. Fowlkes:

Amount advanced and paid to Francis T. Stone, on account of the cost of the land	225.00
Amount of investment in money by Francis T. Stone.....	532.20
Amount of investment in money by Julius W. Fowlkes.....	225.00
	<hr/>
Total cost of land and buildings.....	\$757.20

JAS. G. PAYNE, *Auditor.*

36-39

SCHEDULE B.

Account between the Complainant and Defendant as Partners.

Francis T. Stone.

CR.

By Amount furnished for the use of the joint business.....	129.99	
Less Amount received from J. M. Gregory for 22 cords of wood.....	11.00	
	<hr/>	118.99

DR.

To One-half of the above amount as expended in the prosecution of the business which resulted in loss	59.50
	<hr/>
Amount due by complainant to defendant	59.49

JAS. G. PAYNE, *Auditor.*

40 * * * * *

41 Mr. ROBINSON: This list of total expenses up to date begins on page 79 of the testimony. I add here the complainant's analysis, page 88 of the record, of all the money received by him from Stone and of the way in which it was expended, aggregating \$178.84. Subsequently he adds one dollar to that, making \$179.84. Then on page 86 he gives a list of various expenditures that he thinks should be credited to him, \$16. for his own expenses in going about the country looking for a place, \$18. for his own payment of hands, and \$13.50 for his contribution for furniture to the place.

Q. Has this property any deed of trust or mortgage upon it? A. No, sir.

Complainant's Exceptions to Auditor's Report.

Filed October 23, 1905.

In the Supreme Court of the District of Columbia, Sitting as a Court of Equity.

Equity. No. 23921.

J. W. FOWLKES

v.

FRANCIS T. STONE ET AL.

The complainant by Leigh Robinson, his solicitor, excepts to the Auditor's Report filed herein on October 13th 1905, and for cause says:

(1.) That said Auditor's Report is erroneous, in that it reports as a loss sustained in the joint business the sum of \$129.99, reduced by the receipt of \$11.00 on joint account to \$118.99; one-half of which is due from Complainant; whereas so far as said sum was a partnership fund, the same was expended for the partnership and the equivalent received, and whatever loss occurred in the fruit of such expenditure was not a partnership loss at all, but the loss exclusively of Complainant; and so far as the said sum of \$129.99 included sums which were no part of the partnership fund & not expended as such, the same do not properly enter into this account.

(2.) That said Report is erroneous, in that it holds, that this Complainant should not be allowed the value of the services contributed by him to the enhancement of the value of the property, in contradiction of the rule laid down by this court, & the Supreme
43 Court of the United States.

(3.) That said report is erroneous, in that, it holds that the partnership venture was a failure, whereas the property purchased, as shown by the offer of the defendant Harper, had increased in value to double the money paid for it and expended on it.

(4.) The said report is erroneous, in that it holds that the complainant is not entitled to any reimbursement or restitution from the defendant Stone, for, without any cause to justify it, abandoning himself, and suffering the defendant Harper to abandon (without any conference with Complainant or Complainant's counsel, and without the knowledge of either) a sale, which said defendant says under oath, was \$500.00 more than he can now get for the property; and which like every other advantageous offer & sale cannot be counted on to occur again.

LEIGH ROBINSON,
Solicitor for Complainant.

Decree.

Filed March 2, 1906.

In the Supreme Court of the District of Columbia.

No. 23921, Equity Doc. 53.

JUNIUS W. FOWLKES

vs.

FRANCIS T. STONE ET AL.

44 This cause having been heard upon the auditor's report and the complainant's exceptions thereto, the first, second and third of said exceptions are sustained, and the fourth over-ruled; and it appearing to the court that the partnership business included and related to the real estate as well as to the poultry business and that the improvement to the real estate by the labor of the complainant should be treated in the same manner as the improvements thereof in the erection of buildings by the defendant Stone and that when they are so treated the contributions of the complainant to the partnership business and property equal the contributions of the defendant and consequently that the complainant's interest in the real estate is equal to that of the defendant and that he is entitled to be treated as an equal owner thereof, notwithstanding anything appearing upon said report, it is ordered, adjudged and decreed that said real estate is the property of the complainant and the defendant Stone in equal undivided shares and that the defendant Stone within ten days from the date hereof convey to the complainant by proper deed of conveyance an undivided one-half interest therein, the said real estate being described as follows: "Situ-
45 ated in the County of Prince George, State of Maryland, to wit: five (5) acres of land lying along the Wright and Magruder boundary line, being the Western boundary line of the Laura E. Magruder tract. Beginning at a point marked by a stob and stone about twenty (20) feet east of the center of the Wright or Spa Spring on the Wright-Magruder line, then two hundred (200) feet north to a point. Beginning at the same stob and stone about twenty (20) feet east of said spring, then three hundred and eighty (280) feet south to a stob. This western boundary line of the afore-
45 said five (5) acres is five hundred and eighty (580) feet long. Beginning at a point two hundred feet (200) north of the stob or stone (about twenty (20) feet east of the said spring), then three hundred and seventy-five (375) feet east to a point, then from this last named northeastern point five hundred and eighty (580) feet south to a point, then from this last named southeastern point three hundred and seventy-five (375) feet west to the point or stob at the southern end or corner of the five hundred and eighty (580) feet long western boundary line of the five (5) acres."

Let the complainant recover his costs. Done this 2d day of March, A. D., 1906.

WENDELL P. STAFFORD.

Order Fixing Bond on Appeal.

Filed March 5, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 23921, Doc. 53.

J. W. FOWLKES

vs.

F. T. STONE ET AL.

The defendant Stone in the above entitled cause having noted an appeal from the decree signed herein on the 2nd day of March, A. D. 1906, it is by the Court this 5th day of March A. D. 1906 ordered that the penalty of the Appeal bond to act as a supersedeas bond herein shall be in the sum of five hundred dollars.

WENDELL P. STAFFORD, *Justice.*

46

Order Fixing Penalty of Appeal Bond.

Filed March 5, 1906.

In the Supreme Court of the District of Columbia, Sitting in Equity.

Equity. No. 23921, Doc. 53.

J. W. FOWLKES

v.

F. T. STONE ET AL.

The complainant herein having noted an appeal from the decree herein, signed the 2d day of March, 1906, overruling said complainant's Fourth Exception to the Auditor's Report, it is ordered this 5th day of March, 1906, that the penalty of the appeal bond shall be in the sum of fifty dollars.

WENDELL P. STAFFORD, *Justice.**Memoranda.*

March 22, 1906.—Appeal bond in the sum of \$50.00 approved and filed by complainant.

March 22, 1906.—Supersedeas bond in the sum of \$500.00 approved and filed by defendant, Francis T. Stone.

47

Memoranda.

May 8, 1906.—Time for filing transcript on appeals taken herein extended to and including June 15, 1906.

June 12, 1906.—Time for filing transcript on appeals taken herein further extended to and including August 15, 1906.

48 *Stipulated Abridgement of Testimony for Record on Appeal.*

Filed August 3, 1906.

In the Supreme Court of the District of Columbia.

Equity. No. 23921.

JUNIUS W. FOWLKES

vs.

FRANCIS T. STONE ET AL.

By consent of counsel for the respective parties, it is hereby agreed that the following abridgement of the testimony shall be substituted for the original testimony in preparing the record on appeal.

LEIGH ROBINSON,
Solicitor for Complainant.

P. R. HILLIARD,
J. S. EASBY-SMITH,
Solicitors for Defendants.

49 JOHN H. MCCAULEY testified, in substance: That Messrs. Fowlkes and Stone were negotiating for the purchase of a farm from him, but failed to do so. Fowlkes introduced Stone as a partner in buying the farm.

HOLMES CONRAD testified, in substance, as follows, on direct examination:

Defendant Stone admitted to him, in witness' office, that he owed complainant Fowlkes about \$250.00. Subsequently Stone agreed, in witness' presence, to pay Fowlkes \$225 or \$230, *i. e.*, \$50 in cash, and notes for the remainder in one or two years. Stone said he owed it on account of the joint purchase of the land in question, and Stone asserted certain grounds of offset. "Mr. Robinson at the time and in my presence made a memorandum in lead pencil of these amounts."

Cross-examination:

Witness declined to represent Fowlkes because he talked too much. Stone did not admit that he owed Fowlkes as much as the latter claimed. Offer of settlement was made by Stone on account of the land and not on account of the partnership business. Fowlkes claimed about \$400.00.

W. GWYNN GARDINER testified, in substance: That complainant consulted him, and claimed that defendant Stone owed him from \$400 to \$600. Witness saw Stone who said he originally owed complainant \$225.00, but then owed him about \$170.00, and said he would pay the latter sum, *i. e.*, \$50.00 in cash and remainder
50 in notes. The interview was in relation to purchase of real estate in Prince George County, Maryland. Witness did not

take complainant's case because latter was unable to pay a certain fee. Witness advised complainant to take \$225 if he could get it. "My motto is always to settle cases out of court if possible. Even though I do not get as much as I would by going to court." "In further answer to your question I will say, if permitted, that I always felt it was a clear case. I told Col. Fowlkes so; told Mr. Homles Conrad so; I told Mr. Robinson."

JESSE M. GROVE, a clerk in the drug store of defendant Harper, testified, in substance :

That complainant and defendant talked about the land in question in the presence of witness. Witness was of the opinion that they owned the land together.

JAMES G. SINCLAIR testified, in substance :

That complainant and defendant bought bedding and other articles from witness, defendant paying for some by check. Witness thinks they bought it together—understood so. About \$17.00 worth was bought in 1900. They were at witness' place of business two or three times together, and defendant Stone paid for what was bought. They said they were going to raise chickens, and were going in partnership in the poultry business. Witness thinks that complainant and defendant said that they had bought the land together. "They both bought it together as I understood to
51 raise chickens on over there; they told me so I THINK."

CHARLES B. WHITE testified, in substance :

That complainant and defendant called at his place in search of a location for a hennery. Complainant cleared about one acre of land, but did not "grab" it. The land was in his neighborhood in Prince George County, Maryland. It is worth \$40 to \$50 an acre to clear land. Worth half as much when not "grubbed." Parties called at witness' place only once. They said nothing about partnership. Witness inferred they were both interested. Complainant was superintending things. He did not seem to be well. "I saw that gentleman there (Mr. Fowlkes). He seemed to be clearing and improving the place. I made only one call there * * *. He made quite a little clearing there through his efforts. I suppose perhaps an acre. I did not pay very much attention to it. I just called to see what he was doing in that business * * *. I should think any man superintending what he did would be worth perhaps \$50.00 a month, but I don't know how long he was there."

Q. "Do you mean to limit the acre cleared to an acre, or do you mean to say that there was no more cleared after you left? A. No sir, there may have been a half a dozen acres cleared after I left for what I know."

GEORGE CLEVELAND, Clerk, Oxford Hotel, City, testified that he introduced a young man to Stone, who wanted to rent the place in question, and Stone said that he, Stone, was the same as complainant; that it made no difference which he saw and he
52 rented it from complainant. Heard them (Stone and Fowlkes)

say they were looking out for land to go in the chicken business. All three of us talked of going in partnership in land as well as poultry business.

Cross-examination :

Q. "You swear positively that you heard a conversation between Mr. Fowlkes and Mr. Stone, as to a partnership for the purpose of buying land and raising poultry?" A. "Yes, sir." * * *

Q. "Might it not have been a partnership for the purpose of raising poultry?" A. "It might have been, but that was not my understanding."

Q. "And that the land was owned by Mr. Stone?" A. "No, sir; because it was directly stated that Mr. Fowlkes was to pay so much money for his interest."

Q. "How much money?" A. "I do not know how much it was. When I was to go into it the suggestion was that we were to buy land for \$1,000, and each of us was to pay a little over \$300 a piece, but after that I do not know how it was."

JOHN W. GREGORY (Thinks Fowlkes worked on place).

Neighbor in Country. Complainant on place about a year, sick in February. Called to see Complainant when he was sick. Said his interest was such that he could not leave the place and go to a hospital. Complainant's services were worth \$50.00 a month. 1½ acres of land cleared up, I should judge. Affiant purchased wood from complainant who told affiant to pay defendant Stone for same which affiant did. Mr. Fowlkes showed me the trees to cut and what to leave standing. One acre will yield about 22 cords
53 of wood. Complainant told affiant he had one-half interest in the place. Do not know anything about ownership of land but supposed they owned it together. Complainant told me to pay Stone for wood I bought from complainant off place. Saw some starved chickens on place in December.

Redirect:

Q. Mr. Stone in his answer states "that part of the woodland was cleared under the direction of this respondent, i. e. Mr. Stone, by one John Gregory; did you ever clear any land under the direction of Mr. Stone?" A. "No."

Q. "With whom did you make the arrangement for clearing the land?" A. "I did not make any such arrangement. I just made the arrangement to cut down such trees as Mr. Fowlkes pointed out and to leave the others standing; Mr. Fowlkes went through and pointed out the trees he wished left standing and what he wanted me to cut."

Q. "You regarded him (Fowlkes) as agent?" A. "No, I supposed at that time that he was a partner."

FREDERICK SPRINGMAN, Expressman, &c.

Called on complainant when he, complainant, was sick. Never saw him work. Defendant Stone told affiant complainant had an

interest in the place and he wanted to take care of the complainant. Called on complainant 3 or 4 times who told affiant he had an interest in the place. 23 fowls on the place. Would not pay complainant \$5.00 a week and board. Didn't know anything of complainant's interest in land, if he had any. (Mr. Springman

54 explained that the reason he did not see complainant at work was because he (Springman) was at work in the city (as mail contractor, and in the General Express business) and the only time he was at his place in the country was in the evening and on Sunday. "I saw what I supposed he had done."

As to value of complainant's services, witness said: "I can only tell you that from what I am paying my man. I have a man on my place and I board him and give him \$5.00 a week; some I have paid more to, but this one I give \$5.00 a week to, and his work is just to look after the place, and do what little chores he can about the farm; he cuts wood, no more than enough for his own use."

Q. "He is what you call a watchman?" A. "Yes."

Q. "And he is charged with no responsibility about your place other than watching it?" A. "Nothing in particular."

Q. "Would you say that Mr. Fowlkes' labors and services and responsibilities there were worth more or less than that?" A. "I could not say that they were worth more, because he is an old man, and probably he could not do just what I would want the other fellow to do, or that I thought he ought to do, if I wanted him to do special work."

Q. "If as a matter of fact, he did no more work, would you consider it worth more money?" A. "Oh, yes, sir; I paid him more in summer time when there are other things to be attended to; such as grass to cut, or taking care of my crops."

The complainant himself testified to the agreement between the defendant Stone and himself, to purchase land in partnership to be used for their joint purposes, and to the purchase in pursu-
55 ance thereof, of 5 acres of land from Mrs. Laura E. Magruder for \$437.50, towards which complainant contributed \$225 in two checks drawn to the order of and delivered to the defendant Stone on May 28th and June 4th, 1900; so delivered "*that he (said defendant) as the common treasurer could invest them in the purchase of our land.*" Complainant wrote in duplicate the contract for building the house upon the land, and deposited a copy with the defendant. Proof was made of the handwriting of the defendant on three sheets of paper, being itemized statements given to me (complainant) by the defendant upon the joint property."

The complainant states that the money received from Stone was as follows:

\$.75 axe.
.30 hatchet.
.60 hoe.
.50 saw.
5.00 gun.
5.00 pistol.
3.75 coal.

3.00 hauling out furniture.
 1.00 one-half of a second-hand carpet.
 3.00 removing hen house.
 .65 chicken feed.
 .50 wheat bran.
 .24 12 shells ammunition for hawks and chicken thieves.
 .75 bed comfort.

56

26.50 chickens bought.
 2.20 my laundry.
 3.10 car fare.
 4.50 paid hands.
 3.00 work on Spring and digging ditch.
 26.25 food for J. W. Fowlkes.

\$90.59

34.50 for hospital and medical expenses.
 90.59

125.09

.75 zinc plate.

125.84

2.00 loan.

127.84

1.00 lantern.

128.84

1.15 added.

129.99

The complainant gave directions for the house which was built upon the premises, superintended the construction, and drew or outlined the building contract, which was that of J. W. Tubman with F. T. Stone and J. W. Fowlkes.

Complainant proved Exhibits A. H. 1, 2, 3. Exhibit A. H. No. 1 was given, complainant says, to show the total outlays, "so that we could divide the proceeds of the Schuerman sale, and to show my interest therein." Exhibit A. H. No. 3 is entirely in the hand of the defendant, including the words at the top. "Duplicate of the contract held by F. T. Stone," and also the words: "Mr. Stone shall

57 interest Mr. Reid: Chew to close the sale according to contract, soon as possible." It witnesseth, that the said Stone & Fowlkes agree to settle and close the land matter in dispute between them. * * * Mr. Stone agrees to receive as his share of the proceeds of the land \$525 and Mr. Fowlkes shall receive the balance. The signature F. T. Stone to A. H. No. 2 is in the handwriting of defendant Stone.

Q. "Is there anything else besides Mr. Stone's name or signature, which is in his handwriting on that paper?" A. "Yes, there is something else," \$525 his share because he assumes the responsibility of the two outstanding notes, 1st being due August 1902 and 2nd August 1903."

Q. "That is in Mr. Stone's handwriting?" A. "Yes."

Mr. STONE: That paper is marked "Duplicate."

Mr. ROBINSON: "I understand that."

These papers were offered in evidence. Not as evidence of existing contracts, but as recognition by the defendant Stone of the interest of complainant in land in controversy.

On Cross-Examination, complainant was asked—"For what purpose did you go to see him (Stone)?" A. "To see if we could not enter into buying some land in partnership."

— "Why did you go to see him at that time?" — "Because I thought Washington suburban property would advance. * * * I thought that poultry, milk and butter was a good idea; Mr. Stone and I selected a spot for the market garden, and the agreement between us was to hire a sixteen year old boy to do that market gardening. * * * Mr. Stone came out to that place, after I had worked there for about four weeks, and said, "Colonel, you have added fifty dollars to the value of this place." Then we
58 agreed to sow grass in the park, and sell the place, he alleging that with the grass and a whitewashed fence around it, it would bring \$2,000. * * * I found that place a wild forest."

Q. "Where is your deed for it?" (the land). A. "I wrote a deed myself of the property to Mr. Stone."

Q. "Was not that rather a peculiar thing for you to do?" A. "No, sir." I trusted him with my money, and trusted him with my title to the property."

Q. "How much did you pay Mr. Magruder for the land?" — "The price of the land was \$437.50."

Q. "How much did you pay?" — "I paid \$225 of that amount."

Q. "When did you pay it?" A. "One check for \$200 was dated May 28, 1900; the other for \$25.00 was dated June 4, 1900."

Q. "When was the land bought?" A. "I bought this land of Edward Magruder—or rather from Mrs. Laura E. Magruder in May 1900; the deed, I believe states August 16, 1900, as recorded."

Q. "Why did you not take title as joint owner?" A. "Because, as I just told you, I trusted him with my money and trusted him with the title."

Q. "How much money did you receive from Mr. Stone from first to last?" A. "\$129.99 * * * The items he handed me after I left the hospital, added to the other items he handed me, make the \$129.99." * * * Every particle of the receipt from Mr. Stone were for necessities, which I have related in my itemized statement."

Q. "Did you ever approach Mr. Stone on the subject of selling

the property?" A. "Mr. Stone and I concluded, after I had made a pretty park out of the rude forest, that the thing to do was to sow down some grass seed and sell the property and divide the proceeds."

59 Q. "When was that?" A. "That was along about the latter part of September, or the middle of September, along in there, 1900."

Q. "How often Mr. Fowlkes did you go to see Mr. Stone at his place of business in this City in reference to this property?" "A. I think about the third or fourth visit possibly the fifth, we resolved to buy land in partnership, and then spent three weeks in hunting suitable land."

Q. "When was that?" —. "That was in March or April 1900." Pending the negotiations of the sale to Scheurman, Stone on four occasions told P. W. Chew, at Chew's office, in the presence of complainant, that complainant's interest in that land was \$231.00"

Q. "For what purpose did you meet in Mr. Chew's office?" —. "Mr. Chew had the selling of the land to Mr. Scheurman; and Mr. Chew said to me that for ten dollars, if successful, he would write to Mr. Stone and try to effect a compromise giving me more than \$231.00; because Mr. Chew said he had examined all the papers and I was entitled to more."

Q. "Did you pay Mr. Chew the \$10.00?" A. "No, sir; the letter to Mr. Stone was not successful."

Q. "Did Mr. Chew write a letter to Mr. Stone" (Mr. Chew being himself the propounder of the question). A. "You did."

Q. "Where is that letter?" A. "I gave it to Mr. Stone."

Q. "When did you first set up any claim to an interest in this land?" A. "When I paid my \$225."

Q. "On the day that you deposited with Mr. Stone the check for \$200, did you draw any cash from him?" A. "He has me charged, I think with five dollars; but I know that I had some money for I did not strip myself of money."

60 Q. "Did you not tell Mr. Stone that you were not acquainted with any of the banks here—that you had your money in Richmond, and that you wanted to bring it here and put it where you could get it when you wanted it, and deposited it with him?" A. "No, sir." "My health began to be impaired in the fall of 1900 because of cutting trees, etc. I went from the hospital to the Soldiers' Home at Pikesville, Md."

* * * * *

Q. "Why, Col. Fowlkes, did you not return to the place in the country after you came back from the Soldiers' Home in Baltimore County?" A. "Mr. Stone declined to give me any more money."

Re-direct:

Q. "One of the checks offered in evidence by the defendant Stone was for \$16.00 in the year 1902. For what was that check handed to you by Mr. Stone?" A. "I placed the land in the hands of Mr. Chew for sale. Mr. or Mrs. Scheurman paid Mr.

61 Chew \$120 cash on that sale; the \$16.00 check that Mr. Stone paid me was a part of the \$60.00 that Mr. Chew paid Mr. Stone, and Mr. Chew retained the other \$60.00 for his commissions."

* * * * *

62 & 63 JOHN R. MANSFIELD—Suburban real estate dealer—Property, the subject of this suit, placed in hands of affiant for sale by Mr. Chew, sold. Affiant received \$50.00 commission. Deal did not go through because purchaser not having the money was not able to comply with terms of sale.

MILTON MARMADUKE, a railroad ticket broker, with office at 609 Pa. Ave., N. W., had been on land in dispute.

Q. "How much land is cleared there?" A. "From $2\frac{1}{2}$ to 3 acres"—ground was cleared for cord wood and not for tillage.

— "I infer your visit out there is a recent one?" A. "Yes, a recent one."

Q. "I suppose, you went out there at the request of Mr. Stone?" A. "I went there to look at the place."

Q. "He asked you to go did he not?" A. "He asked me frequently to go out there."

Q. He asked you lately when you went? A. "Well you can put it that way."

Q. "Had you ever seen the place before Mr. Fowlkes occupied it?" A. "No; that is I had been out on that road, but I never went out in the woods in that direction."

* * * * *

64 Redirect examination.

By Mr. CHEW :

Q. "Will you state your name, age occupation and residence?" A. "Edward Magruder 45 years of age; I am a farmer, in Prince George County, Maryland, where I live."

Q. "Do you know the complainant, J. W. Fowlkes, and the defendant Stone in this case?" A. "I do."

Q. What relation are you to Laura E. Magruder, who conveyed five acres of land in Prince George County, Maryland, to the defendant Stone?" A. "I am her son."

Q. "What connection did you have with that transaction?" A. "Well, I had all to do with it; I sold part of the land—I transacted all the business."

Q. "You represented your mother?" A. "Yes, sir; I acted as her agent."

Q. "To whom did she sell this land?" A. "Well, I made the deal with Col. Fowlkes, but I understood it was for Dr. Stone."

Q. "From whom did you understand that?" A. "From Col. Fowlkes."

Q. "At the time the deal was made?" A. "Yes."

Q. "Have you had any experience in the clearing of land?" A. "Yes, some."

Q. "How much of this land has been cleared and what benefit has it been to it?" A. "Well, you cannot say that there has been any of it cleared. The underbrush has been thinned out right smart. They sold a lot of cord wood out of it; cut most of the trees down; and the place was burned by a fire—I believe the fire got away and burned up the brush."

Q. "It has been testified that there has been considerable clearing there; how are those stumps—grubbed up, or in what shape?"

A. "Col. Fowlkes cut a good many of them down. I guess he cut off some as high as three or four feet, on an average of two to four feet."

65 Q. "Has that benefited the place?" A. "It is harder to cut one foot, after it is cut off that high, than at first."

Q. "So you do not think it has been a benefit at all to the place?" A. "Not in the way of agricultural purposes."

Q. "How as to poultry purposes?" A. "Well, you can raise poultry in the brush as well as you could in cleared land."

Q. "Whopaid for this land?" A. "Why, the notes were given by Dr. Stone and the first payment was made by a check of Dr. Stone."

Q. "Have those notes been paid?" A. "Yes, sir; all of them."

Q. "What did Col. Fowlkes do while he was out there?" A. "Well he stayed around there; I do not know that he did any thing particularly; he had some chickens out there, and was going to raise poultry—open a hennery—but I do not think he derived any benefit from it."

Q. "How was his health while he was out there?" A. "At the last it was very poor. They had to bring him from there to the hospital, I believe, or in to town; I believe Mr. Springman brought him in one day from his house where he was."

Q. "In what condition is that house out there?" A. "In very good condition."

Q. "Is it habitable?" A. "Yes."

Q. "Anybody living in it now?" A. "Yes, sir; there is a family living in it now."

Q. "Are they white folks?" A. "Yes, sir; white people."

Q. "Was it habitable at the time Col. Fowlkes left there?" A. "Yes, sir; in the same condition it is now."

Cross-examination.

By Mr. ROBINSON:

Q. "You say you understood that the place was bought by Mr. Stone; you mean you inferred that?" A. "I always understood the place was Mr. Stone's."

66 Q. "You mean that you so understood as a matter of inference; or, do you mean to say that Mr. Fowlkes said so in so many words?" A. "Mr. Fowlkes always said so."

Q. "Was not that an impression of yours, due to the fact that

you made the deed to Mr. Stone, or your mother made the deed to Mr. Stone?" A. "Yes."

Q. "Was not that the real cause of your understanding that Mr. Stone owned the property?" A. "No, sir."

Q. "What were the words used by Mr. Fowlkes?" A. "Well, I do not know exactly the words used by him."

Q. "Well, what did he say?" A. "It was always understood that this property was Dr. Stone's and, when we made the deal, Col. Fowlkes told me he was buying it for Dr. Stone."

Q. "Mr. Magruder, did he say anything more, or do anything more than inform you that the deed of conveyance was to be made to Mr. Stone?" A. "Only at the very first day, the day the bargain was closed."

Q. "What did he say then?" A. "He said he was buying it for Mr. Stone."

Q. "Who made the contract for the purchase of the place?" A. "Mr. Fowlkes."

Q. "How many contracts did he make before the deal?" A. "Well, there was only one."

Q. "Was there not an agreement made for the purchase of three acres?" A. "No, I think it was four acres."

Q. "Was there not an agreement made for less than five acres?" A. "Yes."

Q. "Did he not draw up the contract for the purchase of three or four acres, whichever it was?" A. "I do not think he did. That extra acre was added on at the time the land was surveyed out. He wanted to go up on a little piece of knoll, and after it was surveyed, then he wanted one acre more, and he said the reason he wanted it was that Dr. Stone was going to build a house on this hill."

67 Q. "Did he draw the contract for the purchase of that five acres?" A. "He drew the contract, I do not know whether it was for five or more acres."

Q. "He drew the contract which preceded the deed for the land?" A. "Yes."

Q. "Did he not draw the deed for the conveyance?" A. "I believe he did; yes, sir. I never saw the deed."

Q. "Your whole transaction, though, for the sale of this land was with Mr. Fowlkes was it not?" A. "Yes, sir; it was with Mr. Fowlkes."

Q. "Your whole treaty was with him?" A. "Yes."

Q. "The whole arrangement of the terms was with him, was it not?" A. "Yes."

Q. "And he managed everything, did he not?" A. "Yes; I guess he did."

Q. "Now, Mr. Magruder, you were occupied on your own farm up in the country?" A. "Yes."

Q. "You would be occupied on your own farm during the day?" A. "Yes."

Q. "And you would not visit Mr. Fowlkes very often during the day, would you?" A. "I used to go over there quite often."

Q. "Well, how often would you visit him during the day?" A. "Well, sometimes I would go over there two or three times a day to the spring to get water."

Q. "When you went to the spring would you go to see him?" A. "I would see him about, if he was there; the spring was very close to the house."

Q. "Was he not generally there?" A. "Yes, very often."

Q. "He was engaged in doing something, was he not?" A. "Well, I do not know what you would call doing something."

Q. "He was engaged occupying himself on the place was he not?" A. "Some people might call it so."

Q. "When you had to send to the spring for water you generally did not go for the water yourself?" A. "If I wanted the water myself, I would go for it. I was very often working rather close
68 up to the place, not over two hundred yards from the place."

Q. "Do you mean that during all the time Mr. Fowlkes was there you were working not over two hundred yards from the spring?" A. "No, not all the time."

Q. "What part of the time?" A. "When working land there, I was."

Q. "About what time was that?" A. "I could not say what time. We generally work land through the summer and not in the winter."

Q. "You worked that land, two hundred yards from the spring, for what purpose?" A. "For farming purposes."

Q. "For wheat?" A. "No."

Q. "For corn?" A. "Corn or hay."

Q. "Which was it—corn or hay?" A. "I will not say which it was; it was one or the other, I guess."

Q. "If you were working it for corn, you would have finished your work, would you not, by about the first of October?" A. "No. We had finished the corn, but not the land, by that time. After cutting the corn off we have to seed the land."

Q. "But the plowing of the land for the corn had been finished by the 1st of October?" A. "Yes, sir; that is finished by July."

Q. Now, then, between the time you had finished the plowing of the land for corn and the time you cut the corn off, you would have no occasion to work there, would you?" A. "Yes."

Q. "I say you would not have?" A. Yes, we would."

Q. "What occasion would you have for working there then?" A. "We had a garden right close to it where we raised sweet potatoes, cantaloupes and tomatoes."

Q. "I am speaking of that part of the cornfield—— A. (Interposing.) "This land is all in the same field."

Q. (Continuing.) "That part of the cornfield nearest the spring?" A. "That laid right on the side of the road."

Q. "This other land that you worked for sweet potatoes,
69 etc., is a little farther from the spring?" A. "Yes, sir; but we had water out of that spring when we worked on that side of that land."

Q. "But you, yourself, would not be going for water at that spring

except when working in that vicinity?" A. "Yes, sir; I would rather go for it, than work, myself."

Q. "You mean that all the water you drank you brought yourself from the spring?" A. "Yes."

Q. "You brought all the water from the spring?" A. "Very often."

Q. "Do you mean that as a habitual thing you brought all the water from that spring?" A. "No, sir; not all of it."

Q. "Well, now, did you see who cut the trees on this place where Mr. Fowlkes was?" A. "Col. Fowlkes cut some of the trees, I believe; he had one or two darkies hired down there for a while who did some cutting and cleaning; and there was a lot of wood cut for John W. Gregory, that is, he bought the wood standing on the land and had it cut into cordwood."

Q. "Did you see Mr. Fowlkes when he was sick?" A. "Yes. I carried him home one night when he was sick."

Q. "Where was he then, when you carried him home very sick?" A. "He was at our house one evening, and he went over to Mr. Springman's house; I carried him from Mr. Springman's house home, started with him—but he walked so slowly that I went ahead and made a fire for him at his house by the time he got there."

Q. "Do you remember about what time that was?" A. "No, I do not remember."

Q. "Did you consider him an ill man?" A. "Well, not an ill man; but I did not consider him a well man, not by any means."

Q. "Were you accustomed to making calls on Mr. Fowlkes to see him?" A. "Yes."

Q. "Irrespective of going to the spring?" A. "Mr. Springman and I used to walk over there very often, most every Sunday."

Q. "That was the time you really visited him, that is, on Sundays?" A. "Well, yes; and then I used to haul leaves
70 on the place."

Q. "You mean on your place?" A. "On his place, from off his place."

Q. "For what was it?" A. "For bedding purposes."

Q. "That was, of course, with his consent?" A. "Yes, with his consent."

Q. "You came there and asked to get some leaves?" A. "Yes. There are a great many leaves around the house, and he was afraid a fire would break out; in fact, they were all around and under the house, and I went over there and hauled several loads, I guess, right close to the house."

Q. "Did you not also have another source of water besides this spring?" A. "Yes."

Q. "A pump in your yard?" A. "Yes."

Q. "You also used water from that pump?" A. "Yes, when close to the house. We used water from the place we were closer to."

Q. "And you were closer to the spring when working near the spring?" A. "Yes."

Q. "At what time were you working potatoes next to the corn

field?" A. "In March; and we do not get through sometimes until November."

Q. "The principal work is done before November, is it not?"

A. "When you get through one class of potatoes you are picking the others out."

Q. "I say, the principal work would be done before November, would it not?" A. "No, sir; the principal work is in getting them out, and you just commence to get them out the 1st of November."

Q. "Do you state that you had, at that time—in the summer of 1900—a potato crop next to the cornfield?" A. "We raised potatoes, corn, cantaloupes and tomatoes, all in the same field."

Q. "How many acres have you on your place?" A. "One hundred and eighty-some acres."

Q. "You do not raise all right next to the cornfield?" A. "No."

Q. "Your place is a large one?" A. "Yes."

Q. "And you do not raise them all on one place?" A. "No."

Q. "The potatoes you raised, were they in the summer of 1900 next to that corn field, that is touching it?" A. "I do not know in what field that year we raised them in."

Q. "You do not know whether in 1900 you were raising potatoes on that particular spot?" A. "No, sir; I do not know as to 1900 whether we did or not."

Q. "You just know that you generally raised them somewhere?" A. "We generally work a field when we come around to it; we do not work the same field every time, and sometimes we do not work one field for three years."

Q. "You cannot say what field you were working in the summer of 1900?" A. "No."

Redirect.

By Mr. CHEW:

Q. "You were working that part of the field that was nearest the spring testified to?" A. "Why, if we hadn't it in corn, we had it in grass and hay, and part of the field we always gardened on, because it is the only land on the place that is fit for early truck."

Q. "And you did make frequent visits to this spring?" A. "We always used the water from the spring when working at that end of the place."

Q. "While Mr. Fowlkes was occupying that five-acre tract?" A. "Yes, sir."

Recross.

By Mr. ROBINSON:

Q. "I understand you to say that you did it at that time if you were working that part of your place; did I understand that to be your answer?" A. "Part of that place we always worked for early trucking."

Q. "Part of which place?" A. "Part next to Col. Fowlkes' tract of land."

Q. "Now, early trucking consisted in what?" A. "Early trucking for cantaloups."

Q. "You do not work cantaloups in a cornfield?" A. "Well, you could work corn on one side of a field and cantaloups on the other side."

Q. "I understood you to say that the part of the field you worked corn in was on the side of Mr. Fowlkes' place?" A. "Yes, 72 & 73 sir, but it was a different part of the field; that is, we worked corn and cantaloups on different parts of the field."

Q. "How near to the spring was the crop of cantaloups?" A. "I guess, three or four hundred yards from the spring."

Q. "When you were working the cantaloups the corn was still between you and Mr. Fowlkes' place?" A. "Yes."

* * * * *

JAN. 14, 1904.

FRANK T. STONE, defendant, age 33,—place of business 609 Penna. Avenue, N. W. In February, 1900, complainant said to him "I want you to go in with me, and go out here in the country and rent a place and start the poultry business. He told me he had three hundred dollars in cash and that he would guarantee another hundred in a year. That was to be used for the poultry business; he said that he would turn that over to me, and make me the common treasurer, as an inducement to go into the poultry business with him." The decision to buy the land in question was about the 14th of April, 1900. The price was \$437.50. "There was paid in cash \$190, and three notes given for the balance payable in one, two, and three years, with six per cent. interest."

Q. "Have these notes been paid?" A. "Yes." "The original contract was written, I think, about the fifth of June, 1900; * * * Mr. Fowlkes lost contract on the ground, and it was found by Mr. Magruder; but Mr. Magruder for some reason never saw fit to give it up; and Mr. Fowlkes rewrote that contract which you have in your hand, Mr. Chew—I requested him to re-write it." The second contract is dated June 28th, 1900. "Mr. Fowlkes came into the store on the 28th day of May, 1900, with a check in his hand, and he says: "Frank, I am out of money, I will just turn over to you this check for two hundred dollars, so I can draw on it for living expenses," he delivered to me this check and he says: "I want some money for living expenses. Let me have \$5.00, and I let him have \$5.00. On the third of June, he came in and got another dollar. The second check was dated on the fourth and delivered to me on the fifth of June, 1900, for \$25.00, Mr. Fowlkes stated that he would have to have his bank account balanced before he
75 could give me a check for \$75.00, the balance he agreed to turn over to me, as a fund to organize the poultry business, when he took charge of it, and that he would guarantee another one hundred dollars in one year."

Q. "How much money did he get from you during the time that you bought the place, and the time he went out there to live?"

A. "He drew from that fund \$19.80 for living expenses in this city; and on the 9th of July, 1900, he drew a check for \$19.95, which he told me would pay for his furniture and have delivered at the place. * * * He went out there and took possession of the place on the 10th of July, 1900, and left on the 22nd of February, 1901, being there seven months and twelve days."

Q. "During that time how much money in total amount did he draw from you?" A. "He drew from July 12th, 1900, to February 22nd, 1901, \$84.50. He admits the amount expended by him for chickens to be about \$26.00; I concede that he spent for clearing the place about \$8.00 and that of what was left, about \$50.50 was used for his living expenses on the place during that period, being about \$7.00 per month which he spent for living expenses."

Q. "Did you ever go to the property while he was occupying it?" A. "Frequently."

Q. "What was he doing there?" A. "Well, very frequently he was not doing anything, and very often I did not see him there; the times that I went there were mostly in the evenings after six o'clock, and on Sundays he usually would be at a neighbor's house, he dined out a good deal, I understood." On first of August, 1901, complainant went to Capon Springs—"When he came back from Capon Springs, he came in a day or two afterwards, and asked me for an itemized statement of the amount of money that he had drawn from this fund. I shall classify these two statements that he has filed as Exhibit B to his bill of complaint in this cause, as

76 Statement A and Statement B. I gave him this statement A as an itemized account of the money that he had drawn from this fund, viz., \$164.90, but Statement B was given to him at a different time. You will notice that one is written on plain letter paper, and the other on Mr. Harper's letter head paper; they were given to him at least three weeks or a month apart. As soon as he received this Statement A a few days afterwards, he began to agitate the question of selling the place, and wanted me to sell it. I told him it did not exactly suit me to sell it then, that I wanted to make some money out of it; he said I had to sell it; he annoyed me very often up to the 16th of September. * * * I finally said to him you bring me back my money, with six per cent. interest, and assume the two notes held against me, and I will deed the place to you," and he went into the Metropolitan Hotel and wrote this letter dated September 16th, 1901, copy of which is Exhibit C to the bill of complaint in this cause—I added the words, "if not sold in forty days, this is void," and signed my name to it." A few days afterwards he asked for a statement of what I had expended on the place, how much I had expended on the land, house, &c., and I gave him this statement which I have classified as Statement "B" known in his bill of complaint as Exhibit "B," and I simply put down the amount I had expended there, and the amount Mr. Fowlkes had contributed towards the poultry business, to show what he would have to get for the place if he wanted any money over and above what I had expended on it." The defendant denied that he ever told Mr. Holmes Conrad that he owed Fowlkes \$200

or \$225, but that he stated, "to get rid of him (Fowlkes) to get him off my hands, I would give him \$183 and some cents, * * * and I felt it was an act of charity to do that."

77 Q. Was there ever any agreement between you as to any interest in the land? A. "No sir." None whatever, I had taken the deed to it. I had assumed all the indebtedness against the place and it was never mentioned at all."

Notes and checks shown witness.

A check for \$500 to the order of Edward Magruder dated June 5th, 1900, is shown to witness.

A. "This is the first check which was given by me to Mr. Edward Magruder, as agent for his mother Mrs. Laura E. Magruder to bind the contract." The check was on the Washington Savings Bank. Check for \$10 to Surveyor, June 29th, 1900. *Two checks for \$50 and \$125 respectively, dated July 27th, and August 1st, 1900, drawn on Washington Savings Bank, payable to Laura E. Magruder as part of the consideration of the land purchased from her; and check for \$350 on Washington Savings Bank (dated August 30th, 1900) for recording deed of sale, etc., and deed of land to Stone; also five checks on Washington Savings Bank to Tubman for building house on the land. In the letter of July 25th, 1900, from Fowlkes to Stone (A. H. 26,) introducing Mrs. Laura E. Magruder, Fowlkes states: "Mrs. Magruder says she will pay all release fees."*

On Cross-Examination the defendant produced his deposit book of account with the Washington Savings Bank (A. H. No. 58).

Q. "Is the Milton H. Marmaduke, who has testified on your behalf in this cause, Mr. Stone, the father of Wilbur M. Marmaduke, who testified at a previous session?" A. "Yes."

Q. "And engaged with him in business?" A. "I do not think they are engaged in business together." Mr. Milton M. Marmaduke is in the railway ticket brokerage business; while Mr. Wilbur W. Marmaduke is connected with the organization of the Knights of Labor."

— Mr. Milton M. Marmaduke runs a railroad ticket office in your store underneath the Metropolitan Hotel in this city? A. "Yes."

78 Q. "You say in your answer to the bill of complaint in this cause that the defendant Robert N. Harper and yourself had agreed on a sale of the land in controversy for the price of \$1500, and that in consequence of this suit the sale has been declared off?" A. "Yes, sir; as is evidenced by the letter filed in evidence as Exhibit A. H. No. 57."

The defendant is then asked as to the purpose for which complainant gave the \$225.00. His reply is: "He deposited with me as an inducement to get me to go into this venture with him." He next says: "It was placed in bank subject to his withdrawal to organize the poultry business." "It was not placed in my hands to draw upon as in a bank; it was for the specific purpose to organize and promote the poultry business." "It was subject to his withdrawal, as I have stated, for this specific purpose." "It was agreed

that it should be drawn upon for him to live on, that he was to live out of it; he told me that this money was in a Richmond bank, and he wanted me to cash it through my own account, and that was stated when he placed it in my hands." All the contracts about this property were drawn by complainant as well as the deed of conveyance to Stone. Fowlkes was so anxious to get a home, and for the poultry business, that he volunteered to do these things so as to expedite the consummation of the sale." The place was rented by Stone to Bendwutter on August 3rd, 1901. The contract of lease is exhibit A. H. No. 59. The rent was \$6.00 per month.

Q. "You considered Mr. Bendwutter exclusively your tenant?"
A. "He was my tenant."

Q. "And not the tenant of Mr. Fowlkes?" A. "No, sir; he was my tenant."

Q. "When was the place rented to Mr. Mangum?" A. "He never rented the place."

79 Q. "How did he come there?" A. "He was taken in by Mr. Bendwutter who was a bachelor to cook for him; Mr. Mangum lived on a hill near him * * *, and Mr. Mangum lived there ever since and he never paid a cent of rent."

Q. "To whom did the wood on that place belong?" A. "To me."

Q. "Did he (complainant) have a right to any of the property on the place except the chickens and the furniture?" A. "No sir; not except being there in partnership in the poultry business—of course he exercised authority in that respect."

Q. "A witness on your behalf Mr. Wilbur W. Marmaduke, who is here now, testified that in his opinion the mind of Mr. Fowlkes was impaired, and he supposed that you shared in this opinion, and looked on the complainant as not a proper person to do business; did you share in that opinion?" A. "I did, this was in the summer of 1901, mind you, after he left the place."

The defendant identified the entries in his Washington Savings Bank book of \$25 June 6th and \$200 May 31st, as the entries of the deposits received by him from the complainant.

Q. "You made no payment on the land until you received that first check?" A. "No, I did not. The first payment was made on the fifth of June."

— "On the prior pages of this book (A. H. No. 37) you have various sums of money, the total of which is \$164.90?" A. "That was the money placed in my hands by Mr. Fowlkes in the form of two checks subject to his withdrawal, for organizing and promoting the poultry business. I will state here, that there is \$60.10 more subject to that fund for organizing and promoting the poultry business, if he should like to go and spend it."

Q. "All of this \$164.90 came out of the \$225.00?" A. "Yes."

80 Q. "And this is the total?" A. "Yes."

— "The balance being still money to which he is entitled?" A. "Well, the money is for that purpose—the fund for that

purpose. It is part of a fund of \$400 which he was originally to put in."

Q. "Well, it is a remainder of that \$225.00, is it not?" A. "It could be used for that purpose, I have stated in my answer to the bill, that the money could be used *improving the place and the hen houses.*"

Q. "This \$164.90 you state was drawn from the \$225.00?" A. "Yes."

Q. "And the \$60.10 is the balance of the \$225?" A. "Yes, that can be used to day."

Q. "It was a balance he had not withdrawn from the fund." A. "You can call it that if you like."

Q. "What would you call it?" A. "I have answered your question. I have in my hand the money."

Q. "Which was put in your hands in the form of two checks by him?" A. "Yes."

Q. "Was not that \$41.15 given for his hospital expenses?" A. "\$13 or \$14 was paid out for him at the hospital. The other was *loaned* to him after he left the hospital."

Q. "Of the \$225.00 placed in his hands by complainant, there is left \$60.10?" A. "Yes."

Q. "Has the complainant the right to withdraw that?" A. "For the use of the poultry business of this place, it having been placed there for that specific purpose."

Q. "Has the complainant the right to withdraw it?" A. "I judge he has not, it being placed there for the use of the poultry business on this place."

Q. "Do you still expect to continue the poultry business on this place?" A. "Yes, sir."

Q. "With the complainant?" A. "I have nothing against Mr. Fowlkes except what I consider his unreasonable notions against me. I have the kindest feeling toward him in every respect." A portion of the \$225 was spent upon three hen houses and out of it, "there were various things got for the purpose of shaping the place up."

81 Q. "This sum of \$164.90 in this itemized statement represents the amount of money he had withdrawn from this fund?" A. "Yes."

Q. "That is the total amount?" A. "Yes. The whole thing is: I simply put down the amount I had expended there and the amount Mr. Fowlkes had distributed to the poultry business to show what he would have."

Q. "The amount of money you had expended on it came to \$517.35?" A. "That was the money *I had paid out* for the land and houses up to that date."

Q. "You arrived at that by subtracting \$225. from the previous expenses?" A. "*I subtracted the \$225 from the \$742.35*; but under no consideration was it an admission that he has an interest in the land."

Q. "It was given to carry out this proposition which I now show

you, and which is the original of exhibit 'C,' to the bill of complaint in this cause?" A. "Yes. This is written by Mr. Fowlkes?"

Q. "Your name and date to this original were written by yourself?" A. "Yes—and also, if not sold in forty days this is void."

Q. "Does not the whole body of this original proposition, which I show —, and copy of which is exhibit C to the bill of complaint in this cause, show that it was written in the same handwriting?"

A. "It seems to. It is possible that he re-wrote it. There was an original rewritten; I added to it 'if not sold in forty days this is void'; it may be I requested him to add the 40 days in which to sell it."

Q. "This paper which is marked Exhibit A. H. No. 1 to the testimony in this cause, the whole of that is in your handwriting, is it not?" A. "The face of the two pages are in my handwriting."

Q. "Now then, the object of this statement marked A and which you call statement B is first to enumerate the total expenses, and then to subtract therefrom the \$225.00 of the complainant to show what he would have to sell the place for over and above that?" A. "I had given him this letter, of which

Exhibit C to the bill is a copy constituting him an agent to sell the place. I had given him the privilege to sell the place, and I simply submitted this statement to him, after his earnest request, to show him how much he would have to get above what I had expended on the land, and the interest on what I had expended, if he wanted to get any money out of it. It was to show as I have already stated what I had expended on the place, with interest on the amount expended, and what he would have to get for the property if he wanted anything out of it."

Q. "What he must bring you was the balance after deducting from the total expenses the \$225 of the complainant, was it not?"

A. "He was to bring me my money back with six per cent interest." * * *

Q. "You arrived at that by subtracting \$225 from the previous expenses?" A. "I subtracted the \$225 from the \$742.35; but under no consideration was it an admission, that he had an interest in the land. He had an interest in the poultry business, and I had his money in my hands for that purpose. I had it all up there in that statement—everything. Even the money he had withdrawn, but under no consideration was there any admission on my part, knowingly, that he would ever make claim to interest in the land."

Q. "I am trying hard, Mr. Stone, to get an answer to my question." * * *

Q. "The reason you would take that money was because that sum was left after subtracting of the \$225 from the \$742.35?" A. "No."

Q. "Why was that deducted?" A. "Because as I have just stated, to show what he would have to get for the property to get anything out of it."

Q. "Now you have arrived at that \$517.35 as a statement of what

83 *you had expended on that property up to the date when this paper was prepared, had you not?* A. *"I had arrived at that from the statement in my book."*

Q. *"That was a statement of what you had expended on the property?"* A. *"Up to that date."*

Q. *"Now on that \$517.35, you also charged there \$31.01 interest, did you not?"* A. *"That is the amount of interest on the money at six per cent."*

Q. *"Now, Mr. Stone, why do you charge the complainant interest on \$160.90?"* A. *"I deducted \$225, the amount of money the complainant had put in my hand, from the total amount of \$742.35; that was not included in any way, shape or form, in the \$548.36, and it was not meant to be included in any way, shape or form in that."*

Q. *"You cannot get these figures here—\$742.35, without including the \$164.90?"* A. *"No."*

Q. *"Then it is one of the elements in the amount \$742.35?"* A. *"Yes, by those figures."*

Q. *"Did you not tell him he must bring you interest on your money?"* A. *"I do—I would under those circumstances."*

Q. *"Was it understood that you were to spend nothing for the chicken business?"* A. *"I was to furnish the place as my share in the partnership business."*

Q. *"As matter of fact you spent nothing in the chicken business?"* A. *"I spent a good deal of energy going out there."*

Q. *"I mean money?"* A. *"No sir."*

Q. *"Why did you not pay interest on his money in your hands?"* A. *"Because it was in my hands subject to withdrawal for this specific purpose." The original of Exhibit C is filed in evidence and marked Exhibit A. H. No. 60.*

Q. *"I now come to another agreement. The negotiations with Mr. Scheurman were conducted I believe with Mr. Chew?"* A. *"Yes."*

Q. *"Who placed this property in the hands of Mr. Chew?"* A. *"It was placed mostly under this statement Exhibit A. H. No. 60."*

84 Q. *"I understood you to say the first time, that this proposition had ended in forty days after its date, i. e. on the 26th of October, 1901?"* A. *"Yes."*

Q. *"Then, it has no application, as I understand you, both in your examination in chief, and now in your cross examination—after the 26th of October, 1901?"* A. *"The land was in Mr. Chew's hands for sale. It has always been for sale." * * **

Q. *"Now I ask you who placed this property in the hands of Mr. Chew?"* A. *"Mr. Fowlkes."*

Q. *"This paper which I show you, and which has been filed in evidence as exhibit A. H. No. 3, is entirely, I believe, in your handwriting, is it not?"* A. *"There is something on the back of it not in my handwriting."*

Q. *"I refer to the face of the paper?"* A. *"Yes."*

Q. "Including the words 'duplicate of contract held by F. T. Stone' at the top?" A. "Yes."

Q. "And the words, 'Mr. Stone shall instruct Mr. Phil Chew to close the sale according to the contract as soon as possible,' also at the top of the paper, are in your handwriting?" A. "*Yes, sir, I was very anxious to get my money.*"

Q. "In this paper you say: 'Mr. F. T. Stone agrees to receive as his share of the proceeds of the land \$525.00,' why do you call that your share of the proceeds of the land?" A. "That was written by the complainant, and this was a copy—I copied this from the one he held."

Q. "Well, this is your language?" A. "I simply copied it."

Q. "Well now, the question is, *why do you call that your share of the proceeds of the land?*" A. "*I was willing to call it anything to get my money out of it. I thought it settled the business entirely.*"

Q. "Why do you speak of \$525 as being your share of the proceeds of the land, when you owned the whole of it?" A. "That was plus \$179."

85 Q. "Well, that is in case certain notes were not paid, what you say your share of the proceeds of this land is \$525.00?"

A. "Because I was willing to do anything to get my money out; I could not use it, it is tied up in that land today, and I cannot get it out. That was one reason. Another reason was, that I wanted to get rid of him."

Q. "Did you speak of it as a *share* to get rid of him?" A. "Those are his words."

Q. "Those are your words?" A. "That is a copy of his paper."

Q. "This was written by yourself?" —. —.

Q. "That is your signature to that paper (A. H. No. 2), is it not?"

A. "It is my signature."

Q. "In this paper (Exhibit A. H. No. 2) occurs this statement—The land having been sold for part cash and part notes; the said Stone and Fowlkes agree to receive each *the said cash pro rata, etc.* Why were you and Fowlkes to receive that *pro rata* if he had no *ratable proportion*?" A. "I did not subscribe to that."

Q. "You have subscribed to it, have you not?" A. "My name is on that paper."

Q. "Do I understand you to say that when you signed this paper (A. H. No. 2), you did not know what was in it?" A. "I signed it with the understanding that it must be like this one (A. H. No. 61) and that it would settle the matter in dispute between us."

Q. "Did you sign this (A. H. No. 2) without knowing what was in it?" A. "I did—that part of it there—believing this (Exhibit A. H. No. 61) was the original—knowing it was the original."

The following letter to the complainant bearing date March 8, 1902, was offered in evidence:

"DEAR SIR: I would join you in a warrant to arrest Mr. J. A. Bendwutter if he has not come up to his contract, signed March 7 and 8, 1902.

Respectfully,

FRANK STONE."

86 And also the contract dated March 7, 1902.

Q. "In your answer to the bill of complaint in this cause, you state that a portion of the \$225 was spent in equipping this property. What portion was spent in the equipping of the property?" A. "Two hen houses were built—three hen houses were built, in fact; and there were various things gotten for the purpose of shaping the place up."

Q. "In examining this bank book (Exhibit A. H. 58) I see a list of vouchers returned; and I see that these checks which I have here, being marked Exhibits A. H. Nos. 13, 14, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, and 53, correspond to the vouchers returned between June 6th and November 9th, 1900, with the exception of \$10.00; now I have here a list of the checks between those dates, and a computation of them, and I would like you and your counsel to examine them and see if my list and arithmetic are right?" A. "I have examined your list and computation, and found them correct, as to the computation." (Note: For reference hereafter to said list and computation, the same is herewith filed in evidence and marked Exhibit A. H. No. 64).

(Copy of Pages 3, 4, 5, and 6 of Bank Book (Exhibit A. H. No. 58), Containing Entries Beginning March 1, 1900, and Ending June 1, 1901.)

1900.

Mar. 1. To Bal.....	\$584.38	5 vouchers returned.....	\$36.25
Apr. 21. G.....	40.	By Balance.....	813.13
June 6. G.....	25.		
May 31. Dep.....	200.		
	<hr/>		<hr/>
	849.38		849.38
	<hr/>		<hr/>

87

1900.

June 6. To Bal.....	813.13	14 V. R. amounting to...	508.45
18. G.....	15.	By Balance.....	364.68
July 19. G.....	25.		
Nov. 7. G.....	20.		
	<hr/>		<hr/>
	873.13		873.13

1900.

Nov. 9. To Balance....	364.68	3 V. R. amounting to....	85.
Dec. 6. G.....	15.	By Balance.....	349.68
1901.			
Mar. 11. G.....	55.		
	<hr/>		<hr/>
	434.68		434.68

1901.

Mar. 16. To Balance	349.68	5 V. R. amounting to....	337.
		By Balance.....	12.68
	<hr/>		<hr/>
	349.68		349.68

1901.

June 1. To Balance.....	12.68
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The defendant Stone identified as being in his own handwriting, a letter of March 8th, 1902, to the complainant, offering to join complainant in a warrant to arrest J. A. Bendwutter (The tenant of the land in case he did not comply with contracts), also a letter of March 16th, 1902, to complainant stating White agrees, "in view of the fact you offered him the wood at \$1.75 a cord, he is willing to settle on that basis." And also a special memorandum to White of May 15th, 1902, stating: "I wrote yesterday that Mr. Fowlkes will act in the matter and you will have to settle with him.

88 Q. "There is among other expenses—'Express on watch twenty-five cents.' What were you doing with his watch?"

A. "*I did not have his watch.*"

Defendant explained that complainant had pawned his watch in Winchester, and when it was afterwards expressed C. O. D. defendant paid the freight on it.

Q. "That is the whole explanation about the watch?" A. "Yes."

Q. "When was the watch sent to you?" A. "That was the spring of 1901, some time late in April or the early part of May."

Q. "On July 31st, 1901, he (complainant) writes you in one of the letters put in evidence by you (A. H. 10): Please have the charm mended cheaply and substantially and give it to Capt. Pain with the watch." I suppose the watch was then in your possession?"

A. "Not the watch—Yes, the watch was; I beg your pardon, it was in my possession at that time." He asked me to let him have \$12.00 or \$15.00. I told him I was working on a small salary and would not do it. He said: Well, here is my watch, take my watch if I do not pay you. You can have my watch. He begged me for a week for that watch; the watch was in the bottom of my trunk and not easy to get at."

— On August 20th, 1902, the complainant wrote you, that he had placed the property in the hands of real estate agents here at \$1,000 cash and their commissions above that, and had offered the place to a West Virginia banker at that price. Q. "Was that done by your authority?" A. "I was quite willing to have him sell it. He was, however, just acting for me."

Q. "You will observe here that he says that a commission will come out of it?" A. "I am not responsible for what he says."

— He adds (A. H. No. 1) "I would like that we be agreed on price, he seems to have named a price." A. "He tried to make me agree on a price at which to sell, but I refused to do it. I did not admit that he had any interest in it. He was acting simply
89 as my agent in selling the place, the same as Mr. Chew or any other agent who had it for sale."

— "He writes in this letter (A. H. No. 7) I would like that we be agreed on price—apparently he did not know whether you had agreed on a price or not." A. Interposing. "Well, I am not responsible for the statement he makes."

— "If he made an irresponsible statement would you not correct him and tell him he had no right to fix the price?" A. "I always

considered Mr. Fowlkes a gentleman; *I did not consider that I had the right to tell him.*"

Q. "On April 6th, 1903, I wrote you this letter, which your counsel produced here and handed me today—I will read the whole of the page, in order that I may not ask you a question that might seem to be garbled. 'In my late conversation with you, you mention that while Mr. J. W. Fowlkes had contributed \$225 to the purchase of the land in Prince George's County, Maryland'"

WITNESS (interposing): "I deny that I mentioned that in your presence or in Mr. Conrad's presence."

"The title to which was taken in your name, yet that as you have spent for Mr. Fowlkes (or *loaned* to him) some \$41 to defray his expenses when he was sick and in the hospital, this amount to be deducted from his \$225." I asked you when I wrote you just after our conversation, that if Mr. Fowlkes had contributed \$225 to this purchase, why did you not write back to me that he had done nothing of the kind?" A. "*I was advised by my counsel not to do so. I will modify that by saying that I was advised by my counsel not to commit myself.* Those are the words he used."

— "You brought here this letter of mine to Mr. Robert N. Harper; I suppose Mr. Harper turned this letter over to you at the time it was written—April 21st, 1903?" A. "Yes." In this letter

90 I say to Mr. Harper, "In my interview with you some three weeks ago I stated that I would at an early date communicate with Mr. F. T. Stone, my view of the proper terms of settlement between Mr. J. W. Fowlkes and himself in respect to the real estate in Prince George County, Maryland, jointly purchased by them and proposed to be purchased by yourself, accordingly, on the 6th instant I wrote to Mr. Stone giving my conclusion from figures in the handwriting of myself, which had been delivered to me by Mr. Fowlkes, since then I have heard nothing from Mr. Stone nor from his attorney, and am left to infer that Mr. Stone means to invite me to have the matter settled in court. I now therefore write to you and say that I expect to bring my suit."

Q. "Now, Mr. Stone, when you received from Mr. Harper this — of mine to him, you knew that, unless I received some reply, I would bring suit, did you not?" A. "No, sir, I did not."

Q. "I say so in this letter do I not?" A. "You wrote that letter to Mr. Harper."

Q. "But you say he handed it to you." A. "Yes."

— Here is my letter to you of April 6, 1903, in which I say, "Mr. Fowlkes has handed me an enumeration in your handwriting (quite minute) of all *your* expenses, (a typewritten copy whereof I herewith enclose). It appears that the price of the land was, first payment \$190, first note \$87.50, etc., total \$456.45. Of this the contribution of Mr. Fowlkes (\$225.00) is not quite one-half." Now, there I was giving you not my impression of what you said to Mr. Conrad and myself, as I did in the prior passage, quoted in this letter, but my impression of the result of your figures; was your reason for not replying to that part of my letter the same as you gave for not replying to the first part of it, that is, that you were instructed by your

counsel not to commit yourself? A. "*I do not care to make any statement to you on the question.*"

91 Q. "What did you mean by this language in this letter (defendant's) (A. H. 66) 'his promises have been so many and so few fulfilled, I deemed it expedient for us to employ an attorney at once?'" A. "Mr. Chew had about \$60 in his hands, which should have been in my hands if the man was going to give it up. Mr. Chew was agent for the sale of the place, and he told me time and again he did not want to be involved in any suit."

Q. "When you wrote in this letter: 'Kindly write me your opinion at earliest convenience,' * * * why did you want the complainant's opinion about a matter exclusively concerning yourself and Mr. Chew?" A. "Well, as I said before, Mr. Fowlkes advised me, whether I asked it or not." * * *

Q. "Was not your 'kindly write me etc.' a request to Mr. Fowlkes to advise you as to the expediency of employing another lawyer in this Scheurman negotiation?" A. "Well, I cannot say that it is. I had agreed to give *him back* a certain amount of money; of course he was anxious to get some of this money and I agreed to give it to him *as an act of charity.*"

Q. "Did that require you to write him inviting him to give his opinion as to discharging Mr. Chew?" A. "*In that case, I deemed it proper for me to write that letter.*"

The defendant identified as his own a letter to complainant of April 15th, 1902, in which he says: "As to damages, *we* might make some threats in that direction, but I fear *we* would have a very hard time ever getting any money out of Scheurmans."

92 Q. "When you say in this letter: 'As to damages *we* might make some threats in that direction,' why do you use the word "*we*?" A. "Because it was as I told you; I had agreed to give him back a certain amount of money, and that money *was to come out of the proceeds of this land.*"

— Did you not tell the complainant that in consequence of a breach of promise by the Magruders to cut an avenue through the place, the last payment on the land had been forfeited? A. "I did not tell him that."

Q. "What is the date of the last payment to the Magruders for this land?" A. "The 10th of December 1903."

Q. "Why did you delay so long in paying that last note?" A. "One reason is that I did not have the money at hand. I had seen Mr. Magruder and he had told me that he would not cut the underbrush out; he had gone and cut the tall trees out, while the only thing to be cut out was the underbrush; but that was *agreeably settled in the end.*"

Q. "He said he would cut it out?" A. "I did not say that. I said it was *agreeably settled in the end.* I assumed that responsibility?"

Q. "Then he is not going to do it?" A. "No."

When asked "Whose agent was Mr. Chew for the sale of the property to Mr. Scheurman," the defendant Stone answered—"My agent.

Mr. Chew located a purchaser and he came down to my store and asked me on what terms I would sell this land. He had agreed to sell it on an instalment plan, which I did not agree to; he came there with a prospective purchaser, Mr. Scheurman, and I gave him the terms upon which I would sell it."

Q. "He was then, at the time, and when he received those terms, your agent?" A. "Yes." "Mr. Chew came and asked me the terms on which I would sell the place, and I told him, that Mr. Mansfield agreed to accept those terms; Mr. Scheurman accepted those terms."

The complainant offered, by his counsel, in evidence (A. H. 71) the agreement of November 7, 1902, signed and sealed between Phil W. Chew agent for J. W. Fowlkes and Susie L. Schuerman, for the sale of the land in Prince George's County, for \$1000: "The party of the second part agrees to take care of the two notes now against the property." The paper was offered as an admission by the agent of Stone of the interest of Fowlkes in the land. On re-direct the defendant Stone produced, what originally had been a duplicate of the above, but altered by the substitution interlined in writing of the name F. T. Stone for the name of J. W. Fowlkes and other changes; being (A. H. 74). Stone says, when he saw the words "agent for J. W. Fowlkes" he said, "that land does not belong to Mr. Fowlkes." Mr. Chew said; "to whom does it belong?" and I then got out my deed and contract and showed them to him, and these changes in this paper were made there at that time." *i. e.* when "Mr. Chew with Mr. Schuerman, agent for Susie L. Schuerman, came into Mr. Harper's drug store in the afternoon of the 7th of November 1901." The defendant Stone then offered in evidence (A. H. 75) a contract of sale between "Phil W. Chew as agent for Francis T. Stone, and Susie L. Schurman." This likewise conveys the land for \$1000, with this conclusion; "the party of the second part agrees to take care of the two notes against the property, and deduct same out of each payment."

In explanation of defendant's check to complainant for \$16, dated May 22, 1902, filed as Exhibit A. H. 20, the defendant says: "I gave him that check as an act of charity."

94 Q. "Do you think this land is worth as much as \$1,000?" A. "No, sir, I do not."

Q. "Therefore you were willing and ready and anxious to make a sale at that time for \$1,000?" A. "Yes."

Q. "You were perfectly willing, if you could get your money out of the land, and he could make anything over and above it, that he should *re-coup what he had lost*?" A. "Yes, at that time."

Q. "Subsequently you had not been thus willing?" A. "No."

Q. "Why?" A. "Because he has put me to great expense in defending this suit and doing a good many other things."

Q. "You in a measure relied on him for assistance and advice?"

A. "Yes. He being an older man and a man of experience in the world; at least I thought so when I first went into this venture with him."

Q. "Have you had any reason to change your mind since and concluded that his judgment was not sound and safe to rely on?"

A. "Yes."

Q. "Why did you not pay cash for this land?—you had about \$800 at that time." A. "I said that I had \$819 which I received from the policy of insurance upon the life of my father after his death. I said at that time I had \$600 in the bank."

Q. "Why did you not pay the whole purchase price in cash out of the \$600?" A. "I had to build houses on the place, and I had other obligations to meet. I was getting a salary of \$60 a month, and I knew what I could do in one, two, and three months."

Mr. CHEW testified: Before any land had been bought he took Fowlkes to look at a place owned by himself (Chew) and for all I could gather, I understood that Mr. Stone was to buy the land and he (Fowlkes) was to stay on the property and raise chickens
95 there. Col. Fowlkes gave me the property to sell; I put it in the hands of Mr. Mansfield, a real estate agent in this city, who received a deposit, and brought Mr. Sheurman to my office. I then drew up the papers in the name of Col. Fowlkes because I was laboring under the impression that he owned the land and he had given it to me to sell; but it afterwards developed that Mr. Stone held the title, and at Mr. Stone's request, I changed that contract. I did not represent him (Fowlkes) but represented Dr. Stone."

In rebuttal, GEORGE W. SCHEURMAN testified he was a party to Exhibit A. H. No. 71, entered into by witness as agent for his wife and Phil W. Chew as agent for J. W. Fowlkes, which from the time it was executed, until handed to complainant's solicitor had been continuously in possession of witness. Witness was never asked to make any change in it. On being shown Exhibit A. H. No. 74, witness stated that he never saw the interlineations therein before.

Q. "Were you aware they were made?" A. "No, sir."

On being asked why he executed the second paper, the witness answered; A. "The reason was this; When I first entered into the negotiations as agent for the purchase of this property I was informed by Mr. Chew as agent and Mr. Mansfield that Mr. Fowlkes was the absolute owner of this property; but afterwards it developed on the assertion of Mr. Chew, that Mr. Stone had an interest in this property; and it was immaterial to me, then, whether I signed another contract or not, making Mr. Stone interested in this property, as long as I could get an abstract for it—That is whether there was one owner or a thousand, it did not make any difference to me."

Mr. CHEW: "So that you got a good title?" A. "Yes."

96 Q. "Did they say anything about the ownership of the land?" A. "No more than in the first instance, than that Mr. Fowlkes owned the property."

Q. "Did they say anything different from that in the second in-

stance?" A. "It was that Mr. Stone had a claim on the property, whatever the amount was."

Q. "And they left that first paper unimpaired in your hands?"

A. "They did, most assuredly."

A. "And they never said anything to you about any alterations in it?" A. "Nothing whatever."

Q. "And you kept it in that way until you handed it to me in the early part of January of this year?" A. "I most assuredly did."

On cross examination, the witness said: "You (Mr. Chew) wrote the agreement and I signed the agreement, and then afterwards it developed—I think I received a communication from you—that Mr. Stone was interested in the property and asked me to sign another agreement whereby Mr. Stone would be protected in his interest: Isn't that right Mr. Chew?"

Mr. CHEW: "You are on the witness stand."

Q. "This was the contract (A. H. No. 75) under which you purchased the property?" A. "No, sir; there was one previous to that; the 7th of November, 1901, which states that Mr. Fowlkes was owner of the property."

ALBERT B. HUNT (who owned a farm about half a mile from that in dispute) testified that the open land belonging to Mrs. Magruder, nearest to Fowlkes, was not cultivated in 1900, 1901 or 1902; but in 1900 was in pasture grass. The witness did have the opportunity to see Fowlkes at work and states that he (Fowlkes) did the clearing.

Q. "How much is cleared?" A. "Well a strong three acres." This work of clearing, he says, was worth \$100 an acre; I cleared in the neighborhood of sixty odd acres, and it cost me over \$100 an acre."

97 Q. "Do you think the work done by Mr. Fowlkes worth as much?" A. "Why surely! for the reason that Mr. Fowlkes was more careful than I was." He wanted to preserve some of the best trees, and I helped him three times, to my recollection to put up the ladder to cut down the big or long limbs that went into the other trees, to keep from breaking the limbs of the trees he wanted to preserve.

Q. "You considered it a better piece of work than that done by your men?" A. "Yes."

Q. "Did any fire get loose in those woods there?" A. "Not to my recollection until this spring."

Q. "Did you see him burn brush out there?" A. "Yes, many a time; he burned brush, grubbed the brushes, and burnt off the stumps."

Q. "Was any avenue cut there at all for an outlet of this place?" A. "I believe not." I cut the wood up through where the avenue was to be—I cut that myself, and had it burned up in the spring."

Q. "Did that make an avenue there?" A. "Oh, no, the stumps were all in there and brush; I just bought the cord wood, and cut it down without any view to an avenue, but I was told that the avenue went along that line."

Q. "Would you have done the work that Mr. Fowlkes did for less than \$100 an acre?" A. "I could not get it done for that." * * *

Q. "Has this clearing and this improvement to the place been done by the Mangums, who succeeded him there?" A. "Well, they were a class of people I could not get to do the work for me—offering them all kinds of prices; they were a class of people who would not pick up a board or stick if they were to stumble over it."

Q. "No valuable work was done there by them?" A. "No, sir." * * *

Redirect:

— "Which do you think the more valuable service to
98 that property—clearing that place as Mr. Fowlkes cleared it, or building that house upon it that is there now?" A. "Well, I judge the house was by my own; I do not think the house cost over \$200 or \$225 at the most. Now, I think I do it for less than \$250—the same kind of a house, and I think I can do it a little better."

Q. "With your estimate that makes the difference?" A. "Yes, sir." "My wood is just cut down so much a cord; and the brush laid up at so much a cord; but I would rather cut the wood and put it in stacks than clean the land."

Q. "I understand that Mr. Fowlkes did clean his land?" A. "Yes, sir, and I turned the grind stone to help sharpen the hoe to cut the roots."

EDWARD W. WARREN, a builder, who also owns a farm near the place occupied by the complainant in 1900. Witness had heard testimony of Hunt as to Mrs. Magruder's field, and knows said field was *not* in cultivation in 1899 and 1900.

Q. "How far is that field from the house of Mr. Fowlkes?" A. "I should think from 1000 to 1100 or 1200 yards."

Q. "Did you ever have occasion to see Mr. Fowlkes at work on that place?" A. "Yes, frequently, in passing."

Q. "How much land is cleared?" A. "I judge about three acres."

A. "Well, what would you say was the value of the work in clearing that place?" A. "Well, I can only give my own experience. I keep a diary of my own expenses. I never was able—of course I did not clear large stumps in my land, but small stumps and brush—and it cost me to clear that from \$75 to \$100 an acre."

Q. "Was this work done by Mr. Fowlkes in the way of clearing a good piece of work?" A. "Yes, I think, as far as I can judge, it was as I would wish it done on my place."

Q. "Would you have done the work which was done by Mr.
99 Fowlkes for any less than the price you have named?" A.

"No; I could not get it done by contract, and I know I could not do it myself."

Q. "You think you could not get it done?" A. "No, and I tried to get such work done."

Cross-examination :

Q. "What do you think it would cost an acre to do that cutting?"

A. "Well, judging from my own experience I attempted to get a piece of land cleared out this last week—there were no large stumps, in fact no stumps at all. I told them I would not have the stumps cleared, but just one quarter of an acre that had grown in brush to about that height (indicating), but Mr. Weber, whom I tried to get to do the work, wants \$30.00 *i. e.* \$120 an acre, and I would not pay it."

* * * * *

Complainant in rebuttal is asked as to defendant's statement, first, that complainant turned over the \$200 check to defendant for living expenses; second, that complainant's money in defendant's hands was held in trust for the purchase of chickens exclusively.

Q. "Which of these statements is correct?" A. "Neither is true. I placed this money in the defendant's Stone'- hands to buy this land in controversy; as it has all been expended for that purpose there is no balance." As to A. H. No. 1; "The whole of that account was given to me at one and the same time, and for the sole purpose of defining our respective interests in the land in controversy." As to the defendant's statement that he never claimed an interest in the land until September, 100 1901, complainant refers to his letter of April 1st, 1901, filed by defendant, in which he says: "I can clear out considerable and try and get the place in shape to sell." No one but the defendant would ever conceive that I proposed to rise from a sick bed and prepare for sale another man's land.

* * * * *

A. H. No. 3 in the handwriting of the defendant was given in response to the request of letter January 2nd, 1902; "Hand me duplicate of your contract as you told me you would write it off."

* * * * *

The statement made by Stone, that on May 22nd, 1902, he gave complainant a check for \$16.00 and some \$6 or \$8 more, as an act of charity, is untrue. "A man who took my watch and held it for two months as security for \$2 is not likely to give me check for \$16 plus about \$7.00. If, as he has sworn here, he had \$60.10 of my money in the Washington Savings Bank, drawing interest at the rate of three per cent. per annum, there was no necessity of his treating me as a beggar or an object of charity." The letter of complainant to Mr. Chew of January 13th, 1902, (A. H. No. 33) filed by defendant states: "Mr. Stone has dictated to me his construction of the contract—he wants \$135 cash. I take the first note for \$231. and trust deed to secure it."

Q. "Was this what Stone said to you?" A. "It was."

Complainant proved and filed a memorandum (A. H. No. 79) in handwriting of Stone, handed him at the time, and corroborating the statement in A. H. 33.

Q. "Did either Mr. Stone or Mr. Chew, at the time you wrote these letters, state to you: 'You have no interest in this land and have no right to speak as if you had?'" A. "They never once said so." As to the inference of Mr. Chew that the land to be purchased was to be Stone's—

Q. "Did you say anything to warrant that inference?" A. "I certainly did not."

Q. "The defendant says in effect that he had arranged the matter (The cutting or non cutting of the avenue) with the Magruder. "Were you consulted — to this arrangement, or did you have any knowledge of it?" A. "I was not consulted in regard to it, I did not have any knowledge of it."

Q. "Mr. Fowlkes, all these agreements provide that Mr. Stone shall have the gun and you the furniture and chickens; why was this?" A. "That was a discussion of the personal property between us."

Q. "Did Mr. Stone get the gun?" A. "Yes, he did."

Q. "Did you get the chickens?" A. "The chickens were stolen by Bendwutter, and nearly half the furniture by the Mangums, one of whom was brought here to testify against me."

Q. "Why did you leave your furniture out there?" A. "That it might avail to procure more desirable tenants for our property."

Q. "Did you tell Mr. Magruder that Mr. Stone owned this land?" A. "I certainly did not."

Q. "You signed several agreements here in relation to the purchase of this land by the Scheurmans; were you satisfied with those agreements?" A. "I was not satisfied with those agreements because they were an injustice to me; but as I had no money to resort to the court, I adhered to those agreements, and would have still if Mr. Stone had not broken them?"

102 Q. "How often did Mr. Magruder come to your house out there?" A. "Only four times; twice to haul away leaves. I having given him five or six wagon loads of leaves."

Cross-examination :

—. "Did you ever undertake to recover the value of that furniture, or prosecute the Mangums A. "No, because they had gone off forty or fifty miles—left at night like the Arabs; "Folded their tents like the Arabs and silently stole away."

Mr. Conrad says of the interview he had with Stone: "My whole purpose in the matter really was to avoid litigation: and I suggested to this defendant the name of a person to choose as arbitrator to avoid going into the courts; * * * I think I suggested Mr. John Goode. Stone offered in evidence complainant's, letters of January 15th, 1902, to Capt. Chew, one of Stone's solicitors, in which it is said: "On Saturday evening you said something about settling the matter, which indicated a willingness on your part to help. To which I replied, I was willing to arbitrate." Exhibit A. H. No. 33.

In the testimony before the Auditor, Stone is asked by his

counsel—"What valuation is placed on it?" (*i. e.* the realty in controversy). A. "\$1500."

Q. "Who placed that valuation upon it?" A. "Mr. Harper."

(See Harper's letter to Stone of May 4th, 1903, Exhibit A. H. No. 57.)

103

Stipulation as to Surrebuttal.

October 25th, 1904: That if John R. Mansfield (who has heretofore testified as a witness on behalf of the defendant Stone, and who has been for sometime and still is temporarily absent from this city) were present and recalled as a witness in surrebuttal on behalf of said defendant, he would testify that the reason assigned by the purchaser George W. Scheurman to him (Mansfield) for his (Scheurman's) failure to comply with the terms of sale of the real estate involved in this cause was his (Scheurman's) inability to pay the purchase money according to said terms of sale; and that the party referred to heretofore in the deposition of the said Mansfield as the purchaser of the said property is the said George W. Scheurman.

The solicitor for the complainant in agreeing to this stipulation, does so for the purpose of expediting the hearing of this cause, and upon the understanding that it is all that is desired in surrebuttal by the solicitors for the defendant Stone.

And now, this 26th day of October, 1904, comes Patrick R. Hilliard, Esquire, of Solicitors for the defendant Stone and states that they have no testimony in surrebuttal on behalf of the said defendant Stone to take and to be considered in evidence by the court other than the foregoing stipulation.

104

EXHIBIT A. H. No. 1.

Filed October 26, 1904.

(First Sheet.)

1900.		
May 28.	To cash	\$5.00
June 3.	"	1.00
June 6.	"	5.00
June "	" .....	.10
June 18.	"	1.50
June 20.	" .....	.20
June 21.	"	5.00
July 2.	"	1.00
" 9.	Check for furniture.....	19.95
" 10.	To cash	1.00
" 18.	" cash	1.00
" 24.	"	1.00
Aug. 1.	"	1.00
" 9.	" .....	.45
" 14.	Butter .....	.15

"	20.	To cash	1.00
"	25.	Food .....	.60
"	25.	To cash .....	.05
"	28.	"	1.00
Sept.	6.	" .....	.75
"	11.	"	10.00
Oct.	4.	"	10.00
"	19.	"	10.00
Over			<u>\$76.75</u>

105

(Second Sheet.)

Am't forward.....			\$76.75
1900.			
Nov.	6.	To cash	10.00
Nov.	20.	To check	25.00
Dec.	20.	" cash	2.00
"	31.	"	2.00
1901.			
Jan'y	10.	To cash .....	.50
"	17.	"	2.00
"	19.	" .....	.50
"	29.	"	1.00
Feb.	6.	"	1.00
"	11.	"	1.00
"	17.	"	2.00
			<u>\$123.75</u>

Feb.	22.	Entered at Providence Hospital, paid one week in advance	7.00
M'ch	7.	Paid for medical attention in hospital.....	5.50
"	8.	To cash	5.00
"	13.	To check	10.00
Apr.	24.	" cash	1.00
"	26.	" cash	2.15
"	30.	"	5.00

106

May	1.	To cash	\$0.25
"	2.	Express on watch .....	.25
"	2.	To cash	5.00

See A. \$164.90

(Third Sheet, marked A.)

First payment on land	\$190.00
Building house.....	\$240.
" porch	5.
Painting house	16.
Building two hen houses.....	30.
<u>291.00</u>	

Paid to J. F. Fowlkes.....	164.90
“ for surveying.....	5.00
“ “ recording deeds & rev. stamp.....	4.00
“ First note.....	87.45
	<hr/>
	\$742.35
Less rec'd from J. W. F.....	225.
	<hr/>
	517.35
Interest for one year.....	31.01
	<hr/>
	\$548.36

Incidentals not included in above :

Trip to Marlboro.....	1.50
Horse & buggy.....	1.50
Car fare .....	.20
Do. ....	.20
Revenue stamps .....	.50
Ax	1.00
Hatchet .....	.35
Hoe & locks	1.00
Pistol	5.00
	<hr/>
	\$11.25

107

EXHIBIT A. H. No. 2.

Filed October 26, 1904.

(Duplicate of Mr. Stone's.)

WASHINGTON, D. C., Dec. 21st, 1901.

These articles of agreement between F. T. Stone of 1st part & J. W. Fowlkes of 2nd part Witnesseth that the said Stone & Fowlkes agree to settle & close the land matter in dispute between them (being same land as sold through Phil W. Chew) on the following terms, to wit: That \$165.00+\$14 accrued (am't of interest, the 2 outstanding notes held by Mrs. Magruder be made payable to the said Stone to protect him as against Mrs. Magruder who holds these notes against Mr. Stone. The Schurmans have assumed these notes & are expected to be responsible for them & the [above does not mean that the said Stone is to receive the \$165+\$14 above said, in addition to the \$525,]* which he has agreed to receive as his share of the entire proceeds of said land, but it means that the said Stone agrees to receive five hundred & twenty-five dollars (\$525) of the proceeds of said land (\$767) as his share & that said Fowlkes shall receive the balance. Mr. Stone is to have the gun & Mr. Fowlkes the furniture & 18 chickens &c. The said Fowlkes also agrees to these articles

[*Words and figures enclosed in brackets erased in copy.]

herein specified. The land having been sold for part cash and part notes, the said Stone and Fowlkes agree to receive each the said cash & notes pro rata, the said Stone receiving in cash & notes enough cash & notes to make \$525 worth of cash & notes.

108 The said Stone is to have the \$179.00 made payable to him [only as protection & not as a part of his share of the proceeds]* \$525, his share because he assumes the responsibility of the two outstanding notes 1st being due August 1902 & 2nd August, 1903.

F. T. STONE.
J. W. FOWLKES.

Mr. Stone shall instruct Mr. — to close sale of land according to contract soon as possible.

109 EXHIBIT A. H. No. 3.

Filed October 26, 1904.

Duplicate of Contract Held by F. T. Stone.

Mr. Stone shall instruct Mr. Phil Chew to close the sale according to contract soon as possible.

WASHINGTON, D. C., Dec. 31st, 1901.

This article of agreement between F. T. Stone and J. W. Fowlkes witnesseth that the said Stone & Fowlkes agree to settle and close the land matter in dispute between them on the following terms, to wit: That \$179.00 being the amount of outstanding notes, with \$14 accrued interest, shall be made payable to the said Stone to protect him against Mrs. Magruder who holds these two notes, plus \$525.00, which \$525.00 is Stone's share in the proceeds of the land, \$767.00. Mr. F. T. Stone agrees to receive as his share of the proceeds of the land five hundred & twenty-five dollars (\$525.00) and Mr. Fowlkes shall receive the balance. Mr. Stone shall have the \$704.00 made payable to him because he assumed responsibility of the two outstanding notes. Mr. Stone gets the gun, and Mr. Fowlkes the rest of the stuff, chickens, furniture, etc.

110 EXHIBIT A. H. No. 39.

\$82.50.

WASHINGTON, D. C., Aug. 16th, 1900.

One year after date I promise to pay to the order of Mrs. Laura E. Magruder eighty two 50 / 100 dollars, value received, with interest at 6 % per cent. per annum until paid.

[Payable at the Central National Bank of]* Washington City.
Paid.

(Signature torn off.)

Aug. 16 / 1901.

[* Words enclosed in brackets erased in copy.]

(Endorsed :) Aug. 16th 1901 Paid in full Laura E. Magruder
per Julia I. Clarke Agent

82.50

4.95

 87.45

111

EXHIBIT A. H. No. 40.

\$82.50.

WASHINGTON, D. C., Aug. 16th, 1900.

Two years after date I promise to pay to the order of Mrs. Laura E. Magruder eighty-two 50 / 100 dollars, value received, with interest at 6% *per cent.* per annum until paid.

[Payable at the Central National Bank of]* Washington City.
FRANK T. STONE.

Address, 609 Pa. Ave. N. W.

(Endorsed :) Dec. 9th 1901 Paid in full Laura E. Magruder per
Julia I. Clarke Agent.

112

EXHIBIT A. H. No. 41.

\$82.50.

WASHINGTON, D. C., Aug. 16th, 1900.

Three years after date I promise to pay to the order of Mrs. Laura E. Magruder eighty two 50 / 100 dollars, value received, with interest at 6% *per cent.* per annum until paid.

[Payable at the Central National Bank]* of Washington City.
FRANK T. STONE.

Address, 609 Pa. Ave.

(Endorsed :) Paid in full. Dec. 10th 1903. Laura E. Magruder
Julia I. Clarke ag't.

113

EXHIBIT A. H. No. 56.

JUNE 30TH, 1900.

This contract and articles of agreement entered into this day above written by and between Mrs. Laura E. Magruder of the first part and Frank T. Stone of the second part, witnesseth: that the said Mrs. Laura E. Magruder has sold, bargained and granted unto the party of the second part five acres of land in the county of Prince George Md. and lying and situated along the Wright-Magruder line or the Western line of the Magruder tract—being the same land surveyed by the direction of the [first]* party of the first part, by Edward L. Latimer on the 27th June 1900 for the said party of the second part. The consideration for the above mentioned five acres of land is four hundred and thirty seven and

[* Words enclosed in brackets erased in copy.]

50/100 dollars; \$190 cash and balance in equal annual payments in one two and three years with interest at 6 per cent. per annum. The receipt of five dollars part payment on this purchase is hereby acknowledged. Whereas there is an encumbrance or mortgage of — against this property held by Mrs. — Andrews mortgagee, and whereas I, Mrs. Laura E. Magruder am bound to make a perfect title to the said Frank T. Stone, now therefore I Laura E. Magruder do promise, agree and contract to protect and save harmless, the said Stone and hereby bind myself, heirs, executors & administrators to make certain and effectual the said title unto the said Stone, and to this end, I the said Mrs. Magruder do make and
 114 execute this title bond, which shall be in effect my bond of conveyance, and though this instrument of writing may not be expressed in legal terms and phraseology, this paper shall forever be in effect and force as binding on me as a formal conveyance or title bond, and I understand and accept this instrument as my valid and incontestable conveyance or title bond, and I [and]* bind myself heirs executors & administrators not to demur against or resist this my title bond to forever protect the said Stone in the quiet possession of the said five acres. And further, I solemnly covenant, guarantee and warrant with general warranty to protect this my bond and to defend these five acres unto the said Stone against all claiming any interest in said five acres of land. In testimony whereof [I have set]* we have set our hands & seals this day and year above written.

LAURA E. MAGRUDER. [SEAL.]
 — — — [SEAL.]
 — — — [SEAL.]

Witness-:

JULIA I. CLARKE.

J. W. FOWLKES.

115

EXHIBIT A. H. No. 57.

WASHINGTON, D. C., *May 4, 1903.*

Mr. Frank T. Stone, 609 Penn. avenue, city.

DEAR SIR: Under my contract with you and Mr. Poole, for the sale of my drug business at 609 Pennsylvania Avenue, N. W., this City, I agreed to take in part payment thereof a deed from you for your property in Prince George's County, Maryland, near Bennings, provided the same was free and clear of all claims and encumbrances. Recently I have been served with notice of the filing of a suit by Mr. J. W. Fowlkes against you and me in the Equity Court of the District of Columbia, in which said Fowlkes claims to be a part owner of said real estate.

Under these circumstances, I hereby notify you that I will and have withdrawn my offer to take said real estate in part payment of my said drug business. I desire further to notify you that you

[* Words enclosed in brackets erased in copy.]

will have to make other arrangements looking towards a satisfactory settlement of the balance due me.

Yours truly,

ROB'T N. HARPER.

116

EXHIBIT A. H. No. 60.

Mr. J. W. Fowlkes:

All I ask & want is the cash I have invested in the five acres called Springwood with interest at 6 % & also to be released from the two outstanding notes. Just hand me back this and you take the place 40 days is agreed upon as time in which to sell the place. If not sold in 40 days this is void.

F. T. STONE.

Sept. 16th 1901.

117

EXHIBIT A. H. No. 61.

Mr. Stone shall instruct Mr. Chew to close the sale according to contract soon as possible.

WASHINGTON, D. C., Dec. 21st, 1901.

These articles of agreement between F. T. Stone & J. W. Fowlkes witnesseth that the said Stone & Fowlkes agree to settle and close the land matter in dispute between them on the following terms to wit: That \$179.00 being the amount of outstanding notes with \$14 accrued interest, shall be made payable to the said Stone to protect him against Mrs. Magruder who holds these two notes, plus \$525.00 [Stone's sh.]* which \$525 is Stone's share in the proceeds of the land \$767. Mr. F. T. Stone agrees to receive as his share of the proceeds of the land five hundred & twenty-five dollars (\$525.00) and Mr. Fowlkes shall receive the balance. Mr. Stone shall have the \$704 made payable to him because he assumes responsibility of the two outstanding notes. Mr. Stone gets the gun & Mr. Fowlkes the rest of the stuff chickens furniture &c.

F. T. STONE.

J. W. FOWLKES.

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EXHIBIT A. H. No. 62.

Filed November 12, 1904.

WASH., D. C., M'ch 8th, 1902.

Mr. J. W. Fowlkes, Wash., D. C.

DEAR SIR: I will join you in a warrant to arrest Mr. J. A. Bendorritter if he has not come up to his contract signed M'ch 7th and 8th 1902.

Respectfully,

FRANK STONE.

[*Words and figures enclosed in brackets erased in copy.]

119

EXHIBIT A. H. No. 63.

WASHINGTON, D. C., *Mar. 7th*, 1902.

This contract & articles of agreement witness that I J. Bender-ritter do hereby give, deed, bargain & by these presents do convey to Mess. Stone & Fowlkes my stove, portierre, incubators hammock & all else in the house at the Spa Spring in return for & in consideration of the chickens that I had charge of that are mysteriously missing. I waive the homestead law & all other exemptions to protect this contract. My removal of these things above recited will be [an act of]* a criminal act—all else above means everything else except my clothes [musical]* mandolin & flute & incubators & books.

J. A. BENDERITTER.

120

EXHIBIT A. H. No. 64.

Check on Washington Savings Bank to order of Edward Magruder June 5th, 1900.....	\$5.00
Check on Washington Savings Bank to order of J. W. Tubman June 20th, 1900.....	115
Check on Washington Savings Bank to order of Edward L. Latimer June 29th, 1900.....	10
Check on Washington Savings Bank to order of J. W. Tubman July 6th, 1900.....	55
Check on Washington Savings Bank to order of J. G. Sinclair July 10, 1900.....	19.95
Check on Washington Savings Bank to order of J. W. Tubman July 18, 1900.....	75
Check on Washington Savings Bank to order of J. W. Tubman July 23, 1900.....	25
Check on Washington Savings Bank to order of J. W. Tubman July 24, 1900.....	5.00
Check on Washington Savings Bank to order of Laura E. Magruder July 27, 1900.....	50.00
Check on Washington Savings Bank to order of Laura E. Magruder August 1st, 1900.....	125.00
Check on Washington Savings Bank to order of James B. Belt August 20, 1900.....	3.50
Check on Washington Savings Bank to order of J. W. Fowlkes June 7, 1900.....	5.00
Check on Washington Savings Bank to order of J. W. Fowlkes June 21, 1900.....	5.00
	<hr/> 498.45

[* Words enclosed in brackets erased in copy.]

121

EXHIBIT A. H. No. 65.

Filed November 12, 1904.

WASH., D. C., *M'ch* 16, 1902.

DEAR COL.: Your request for me to write how things are progressing was sent me from Mr. Lewis Saturday; I have seen White—he was full of talk and wanted to explain his side at much length—However he agrees, in view of the fact you offered him the wood last year at \$1.75 per cord, *he* is willing to settle on that basis—that is allowing us 25c. for each cord he got from Benderitter—claims to have received only two cords (2). I think though he will pay fifty cents a cord for the $3\frac{1}{2}$ cords, the am't we think he has received; evidently he does not want the matter brought before his chief—*request you and I go to his home as soon as you return*, and the matter will be settled satisfactorily to all. I have notified Mangum, if he sees Benderitter or hears where he is, to let me know immediately; from what the people out about Chesapeake Jc. say, I think he has gone—*you are credited by people out there as giving him a sound thrashing*. I have not been able to see Phil Chew yet. Trust your health is improving, and enjoying vacation much, I am saving the editorial pages of the Post for you.

Respectfully yours,

FRANK STONE.

122

EXHIBIT A. H. No. 66.

Filed November 12, 1904.

WASH., D. C., *M'ch* 25th, '02.

DEAR COL.: I enclose a letter I mailed Mrs. S. L. Shurman c/o Mr. Phil Chew on the 20th inst.—Was around and saw him to-day.—He had not notified or made any move whatever. His promises have been so many and so few fulfilled, I deem it expedient for us to employ an Att'y at once—Kindly write me your opinion at earliest convenience.

Respectfully your friend,

F. T. S.

* * * * *

123

EXHIBIT A. H. No. 67.

Filed November 12, 1906.

WASH., D. C., *M'ch* 20, 1902.

Mrs. Susie L. Scheurman, Wash., D. C.

DEAR MADAM: Owing to your long overdue in settlement according to contract made by Mr. Phil Chew of the purchase of house and five acres of land in Prince George Co., Md., near Chesapeake Jc.—I was persuaded you forfeit all claims and wrights to same, and I shall act accordingly.

Respectfully yours,

FRANK T. STONE.

124

EXHIBIT A. H. No. 68.

Filed November 12, 1904.

WASHINGTON, D. C., *April 15th*, 1902.

Col. J. W. Fowlkes, Baltimore, Md.

DEAR COL.: Your letter of the 11th inst. received. I have not seen Mr. Chew since I wrote you last. I do not know if he notified Mrs. Scheurman or not of contents of note to her of March 20th. Mr. Chew has not communicated any information concerning the matter whatever. As to damages, we might make some threats in that direction, but I fear we would have a very hard time ever getting any money out of Scheurmans. He has no rating as a business man, and you know how hard it would be to get a judgment against a woman.

I sent you a paper (Post) date M'ch 27th, also editorial sheet of April 1st—I have not been saving any part but the editorial sheets; if you want any of those, will be glad to mail them at request.

Respectfully yours,

FRANK STONE.

125

EXHIBIT A. H. No. 69.

Filed November 12, 1904.

WASH., D. C., *Aug. 21st*, '02.

Col. J. W. Fowlkes, Rock Bridge Alum Springs, Va.

DEAR COL.: Your letter and postal received this morning. Enclosed find three 10 grain Trional powders.

If you can sell the place to the gentleman from West Va. for \$1,000, cash, or for 1/3 cash, balance in 1 & 2 years with interest at 6%, I think you had better accept it. I have not had an inquiry regarding the place since returning here from vacation. I wrote this morning to a man who wanted to rent it about the time Benderritter did. Don't know if he ever got located or not, but seemed anxious to rent it then. I spent a very quiet but pleasant vacation. Was up at Christiansburg and Aukam a few days—several inquired after you.

Yours truly,

F. T. S.

126

EXHIBIT A. H. No. 70.

Filed November 12, 1904.

MAY 15TH.

Mr. Frank White.

DEAR SIR: I wrote you yesterday that Mr. Fowlkes will act in the matter & you will have to settle with him, and as there is only one dollar between you, just pay the \$3 & be at rest.

FRANK STONE.

5/15/02.

127

EXHIBIT A. H. No. 71.

Filed November 12, 1904.

Articles of Agreement, made and entered into this seventh day of November, 1901, by and between Phil W. Chew, agent for F. W. Fowlkes and Susie L. Scheurman.

Witnesseth, that the said party of the first part hereby agrees to sell and convey unto the said party of the second part and the party of the second part agrees to buy from the party of the first part all that piece or parcel of ground located in Prince George's County, Maryland, containing five acres, improved by a three room dwelling, which was conveyed to the said F. W. Fowlkes by Laura E. Magruder, for and in consideration of the sum of one thousand dollars, which the said party of the second part agrees to pay to the party of the first part as follows, to wit: \$50.00 upon the execution of this agreement, the receipt whereof is hereby acknowledged as above, and the residue payable as follows: \$50.00 in thirty, sixty and ninety days each, and \$200.00 in fifteen, twenty-seven, thirty-nine and fifty-one months, with interest *with* 6 per cent. from the date of this agreement until paid, for which notes of the purchaser shall be given. Title to be unencumbered, taxes adjusted to date, or the deposit refunded; subject to the approval of the owner. The party of the second — agrees to take care of the two notes now against the property.

Witness our hands and seals.

PHIL W. CHEW, *Agent*. [SEAL.]

SUSIE L. SCHEUEMAN, [SEAL.]

Per G. W. S.

128

EXHIBIT A. H. No. 74.

Articles of agreement made and entered into this seventh day of November, 1901, by and between Phil W. Chew, agent for Frank L. Stone, and Susie L. Scheurman,

Witnesseth that the said party of the first part hereby agrees to sell and convey unto the said party of the second part, and the party of the second part agrees to buy from the party of the first part, all that piece or parcel of ground located in Prince George's County, Maryland, containing five acres, improved by a three room dwelling, which was conveyed to the said F. W. Fowlkes by Laura E. Magruder, for and in consideration of the sum of one thousand dollars, which the said party of the second part agrees to pay to the party of the first part as follows, to wit: \$50.00 upon the execution of this agreement, the receipt whereof is hereby acknowledged as above, and the residue payable as follows: \$75. on Nov. 16'', 75 in sixty and \$266.67 in 1, 2 & 3 y'rs from date with interest *with* six per cent. from the date of this agreement until paid, for which notes of the purchaser shall be give-. Title to be unencumbered, taxes

adjusted to date or the deposit refunded ; subject to the approval of the owner. The party of the second part agrees to take care of the two notes now against the property and deduct same out of each payment.

Witness our hands and seals.

PHIL. W. CHEW, *Agent*. [SEAL.]

SUSIE L. SCHEUERMAN, [SEAL.]

Per G. W. S.

129

EXHIBIT A. H. No. 75.

Articles of Agreement Made and entered into this ninth day of November, 1901, by and between Phil W. Chew, agent for Francis T. Stone, party of the first part and Susie L. Scheuerman, party of the second part,

Witnesseth That the said party of the first part hereby agrees to sell and convey unto the said party of the second part, and the party of the second part agrees to buy from the party of the first part all that piece or parcel of ground located in Prince George's County, Maryland, containing five acres, improved by a three room dwelling, which was conveyed to the said Francis T. Stone by Laura E. Magruder, for and in consideration of the sum of one thousand dollars, which the said party of the second part agrees to pay to the party of the first part as follows, to wit : \$50.00 upon the execution of this agreement, the receipt whereof is hereby acknowledged as above, and the residue payable as follows : \$75.00 on Nov. 16th, 1901, \$75.00 in sixty days, and \$226.67 in one, two and three years each from date, with interest at six per-cent. from the date of this agreement until paid, for which notes of the purchaser shall be given. Title to be unencumbered, taxes adjusted to date or the deposit refunded ; subject to the approval of the owner. The party of the second part agrees to take care of the two notes now against the property and deduct same out of each payment.

PHIL W. CHEW. [SEAL.]

SUSIE L. SCHEUERMAN, [SEAL.]

Per G. W. S.

Approved

FRANK T. STONE, *Owner*.

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Order for Preparation of Record.

Filed August 4, 1906.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity No. 23921.

JUNIUS W. FOWLKES

vs.

FRANK T. STONE ET AL.

By consent of the parties through their solicitors the Clerk is hereby directed to prepare forthwith the transcript of record on appeal, as follows:

1. Bill of Complaint including Exhibit "B" and excluding Exhibits "A" and "C."
2. Answers of the defendants Stone and Harper.
3. Amendments to Bill.
4. Replications to answers.
5. Decree of June 30, 1905.
6. Auditor's Report.
7. Complainant's Exceptions to Auditor's Report.
8. Decree of March 2, 1906.
9. Mem. appeal noted by defendant Stone, supersedeas bond fixed, approved, filed.
10. Mem. appeal noted by complainant, bond fixed, approved, filed.
11. Mem. orders extending time to file transcript in Court of Appeals.
12. Stipulated abridgement of testimony filed August 3, 1906.

- 131 13. The following Exhibits to the testimony:
Exhibit A. H. No. 1, (pp. 79, 80, 81 of testimony).

Exhibit A. H. No. 2, (pp. 83, 84 of testimony).

Exhibit A. H. No. 3, (p. 85 testimony).

Exhibits A. H. 39, A. H. 40, A. H. 41, A. H. No. 56, A. H. No. 57, A. H. No. 60, A. H. No. 61.

Exhibit A. H. No. 62, (p. 257 testimony).

Exhibits A. H. No. 63 and A. H. No. 64.

Exhibit A. H. No. 65, (p. 284 testimony).

Exhibit A. H. 66, (p. 286 testimony).

Exhibit A. H. No. 67, (p. 290 testimony).

Exhibit A. H. No. 68, (p. 292 testimony).

Exhibit A. H. No. 69, (p. 296 testimony).

Exhibit A. H. No. 70, (p. 296 testimony).

Exhibit A. H. No. 71, (p. 298 testimony).

Exhibits A. H. No. 74 and A. H. No. 75.

LEIGH ROBINSON,

Solicitor for Complainant.

P. R. HILLIARD,

J. S. EASBY-SMITH,

Solicitors for Defendant Stone.

132 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 131, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 23,921, in Equity, wherein J. W. Fowlkes is complainant, and Francis T. Stone *et al.* are defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 14th day of August, A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF G. BUHRMAN, *Ass't Clk.*

133 In the Court of Appeals of the District of Columbia.

No. 1718.

FRANCIS T. STONE, Appellant,

vs.

JUNIUS W. FOWLKES, Appellee.

The Clerk in ordering the printing of the Record in the above entitled cause will cause to be printed such portions thereof as are not designated below. The said portions so designated being deemed immaterial and wholly irrelevant to the fair hearing of the case on its merits; the errors for which the appeal is prosecuted being the decree of the lower court (overruling the findings of the Auditor and sustaining the exceptions of the appellee thereto) in finding that the appellant is a trustee for the appellee for a one-half interest in the real property in question, that there is a resulting trust in favor of appellee and in finding further that appellee is entitled to compensation for services rendered by him in the partnership business:

Omit all of answer of Robert N. Harper, pp. 20 to 24.

" replication to answer of defendant Harper p. 25.

" pages 37 to 41 inclusive.

" pages 48 and 49 except 5th to 13th lines of p. 49 to "offset."

" pages 50 and 51.

" page 52 except 18th to 24th line to "judge."

" page 53 except 18th to 26th line to "any."

" page 54 except 3 last lines.

" page 55 except first 7 lines to "land."

" pages 56 and 57.

" page 58 except 4th to 24th line to "statement."

" pages 59 to 63 inclusive.

Omit page 67 except first 11 lines to "did."

" pages 68 to 73 inclusive.

" page 75 except first 20 lines to "expenses."

" pages 76 and 77.

" page 78 except 6th to 24th line to "sale."

" pages 79 to 95 inclusive.

" pages 96 except last 10 lines to "acre."

" pages 97 to 109 inclusive.

" 115 and 116.

" 118 to 131 inclusive.

P. R. HILLIARD,
Attorney for Appellant.

134 DISTRICT OF COLUMBIA, ss : .

Personally appeared before me this 21st day of August, 1906, P. R. Hilliard, attorney for the appellant, who deposes and says: That he served a copy of the foregoing order on Leigh Robinson, Esq., attorney for the appellee by leaving the same at his office, Room 29 Adams Building, 1333 "F" Street, N. W., Washington, D. C., on the 21st day of August, 1906.

P. R. HILLIARD.

Subscribed and sworn to before me this 21st day of August, 1906.
HENRY W. HODGES, *Clerk.*

Endorsed: No. 1718, Court of Appeals. Francis T. Stone, Appellant, vs. Junius W. Fowlkes, appellee. Designation of parts of record to print and omit. Court of Appeals, District of Columbia. Filed Aug. 21, 1906. Henry W. Hodges, Clerk.

135 In the Court of Appeals of the District of Columbia.

No. 1718.

FRANCIS T. STONE, Appellant,

vs.

JUNIUS W. FOWLKES, Appellee.

No. 1719.

JUNIUS W. FOWLKES, Appellant,

vs.

FRANCIS T. STONE, Appellee.

The clerk in ordering the printing of the Record in the above entitled causes, in addition to the parts thereof designated by the counsel for F. T. Stone, will cause to be printed such portions as are mentioned below.

All of the answer of Robert N. Harper, pp. 20 to 24.

The replication thereto, p. 25.

The last line on p. 40, and all of p. 41.

All of pp. 48 & 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59.

On p. 60 omit line 8 to 18, inclusive; print all the rest.

On p. 61, print lines 1 and 2; omit all the rest of page.

On p. 62 print all of page, except lines 1 to 4 inclusive.

Omit as directed by appellant Stone's counsel all of page 63.

Print all of page 67.

Print all of pp. 68 to 72, with the exception of last 14 lines, on page 72.

Print all of pages 75 to 95 inclusive, with the exception of line 13 to line 17, beginning: "You signed this letter," and ending "I do" on page 91.

Print all of pages 96 to 99 inclusive, except lines 14 to 19 inclusive on p. 99.

Print all of p. 100, except lines 7 to 11 inclusive and line 15 to 17, beginning: "The statement" and ending "was untrue."

136 Print all of pages 101 to 121 inclusive.

Print all of p. 122, except last 9 lines, (the postscript).

Print all of pages 123 to 131 inclusive.

LEIGH ROBINSON,

*Solicitor for Appellee in Appeal of Stone,
and for Appellant in Appeal of Fowlkes.*

Endorsed: Nos. 1718 & 1719. Francis T. Stone, Appellant, v. Junius W. Fowlkes, Appellee. Junius W. Fowlkes, Appellant, v. Francis T. Stone, Appellee. Designation of parts of record to print, in addition to parts designated by counsel for Francis T. Stone. Court of Appeals, District of Columbia. Filed Aug. 27, 1906. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 1718. Francis T. Stone, appellant, vs. J. W. Fowlkes. Filed August 14, 1906. And No. 1719. J. W. Fowlkes, appellant, vs. Francis T. Stone. Filed August 22, 1906. Henry W. Hodges, Clerk Court of Appeals, D. C.